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TREASURY DECISIONS

UNDER CUSTOMS AND
OTHER LAWS

VOL. 41

JANUARY-JUNE, 1922

A. W. MELLON
Secretary of the Treasury

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LETTER OF INSTRUCTION.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., June 30, 1922.

The following instructions are published for the information and guidance of customs officers and others concerned:

1. Decisions of the Board of United States General Appraisers adverse to the Government will, if not appealed from, take effect 60 days after their respective dates, except that decisions based on protests filed in Alaska and in the insular and other outside possessions of the United States will take effect 90 days after their respective dates, in accordance with subsection 29 of section 28 of the act of August 5, 1909. Entries covering the merchandise the subject of such decisions will be reliquidated in harmony therewith at the expiration of the period mentioned, except that entries covering merchandise the subject of decisions of the board which follow a given decision of the Court of Customs Appeals involving the same issue will be reliquidated immediately upon receipt of orders from the board.

2. Entries the subject of protests which have not been forwarded to the board, and which are covered in principle by a given decision of the Court of Customs Appeals, will be reliquidated in harmony with the said decision after 30 days have elapsed from the date thereof.

3. Unliquidated entries which involve issues covered by a given decision of the Court of Customs Appeals, and which would in ordinary course be liquidated within 30 days after the rendering of such decision, will be suspended until 30 days have elapsed from the date of such decision, and will then be liquidated in accordance with the principle laid down by the court.

4. In the absence of specific instructions from the department to the contrary, decisions of the Board of United States General Appraisers adverse to the Government, if appealed from by the department, will not result in any change of practice prior to the decision of the appeal by the Court of Customs Appeals.

5. Decisions of the Court of Customs Appeals adverse to the Government will become effective upon the issuing of orders by the Board of United States General Appraisers pursuant to the mandates of the said court. Entries covering the merchandise the subject of such decisions will be reliquidated only upon receipt of such orders.

A. W. MELLON,
Secretary of the Treasury.

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CUSTOMS.

(T. D. 38971.)

Values of foreign coins.

[Circular No. 1.]

TREASURY DEPARTMENT, *January 1, 1922.*

In pursuance of the provisions of section 25 of the act of August 27, 1894, as amended by section 403, Title IV, of the act of May 27, 1921, I hereby proclaim the following estimate by the Director of the Mint of the values of pure metal contents of foreign coins to be the values of such coins in terms of the money of account of the United States, to be followed in estimating the value of all foreign merchandise exported to the United States during the quarter beginning January 1, 1922, expressed in any such metallic currencies: *Provided, however,* That if no such value has been proclaimed, or if the value so proclaimed varies by 5 per cent or more from a value measured by the buying rate in the New York market at noon on the day of exportation, conversions shall be made at a value measured by such buying rate, as determined by the Federal Reserve Bank of New York and published by me as certified by said bank pursuant to the provisions of said section 25 as amended.

S. P. GILBERT, Jr.,
Acting Secretary.

Estimates by the Director of the Mint of the values of foreign coins.

Country.	Legal standard.	Monetary unit.	Value in terms of U. S. money.	Remarks.[1]
Argentine Republic	Gold	Peso	$0.9648	Currency: Paper, normally convertible at 44 per cent of the value; now inconvertible.
Austria-Hungary	do	Krone	.2026	
Belgium	Gold and silver.	Franc	.1930	Member Latin Union; gold is actual standard.
Bolivia	Gold	Boliviano	.3893	12½ bolivianos equal 1 pound sterling.
Brazil	do	Milreis	.5462	Currency: Government paper normally convertible at 16 pence (=$0.3244) per milreis.

[1] The exchange rates shown under this heading are recent New York quotations and are given merely as an indication of the values of currencies which are fluctuating in their relation to legal standards.

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Estimates by the Director of the Mint of the values of foreign coins—Continued.

Country.	Legal standard.	Monetary unit.		Value in terms of U. S. money.	Remarks.
British Colonies in Australasia and Africa.	Gold	Pound sterling		$4.8665	
British Honduras	do	Dollar		1.0000	
Canada	do	do		1.0000	
Chile	do	Peso		.3650	Currency: Inconvertible paper.
China	Silver	Tael	Amoy	.8156	The tael is a unit of weight, not a coin. The customs unit is the Haikwan tael. The values of other taels are based on their relation to the value of the Haikwan tael. The Yuan silver dollar of 100 cents is the monetary unit of the Chinese Republic; it is equivalent to 0.644+ of the Haikwan tael.
			Canton	.8131	
			Chefoo	.7801	
			Chin Kiang	.7967	
			Fuchau	.7544	
			Haikwan (customs).	.8299	
			Hankow	.7631	
			Kiaochow	.7903	
			Nankin	.8071	
			Niuchwang	.7648	
			Ningpo	.7841	
			Peking	.7951	
			Shanghai	.7450	
			Swatow	.7534	
			Takau	.8207	
			Tientsin	.7903	
		Dollar	Yuan	.5344	
			Hongkong	.5364	
			British	.5364	
			Mexican	.5404	Mexican silver pesos issued under Mexican decree of Nov. 13, 1918, are of silver content approximately 41 per cent less than the dollar here quoted; and those issued under decree of Oct. 27, 1919, contain about 51 per cent less silver.
Colombia	Gold	Peso		.9733	Currency: Government paper and gold.
Costa Rica	do	Colon		.4653	
Cuba	do	Peso		1.0000	
Denmark	do	Krone		.2680	
Ecuador	do	Sucre		.4867	
Egypt	do	Pound (100 piasters)		4.9431	The actual standard is the British pound sterling, which is legal tender for 97½ piasters.
Finland	do	Markka		.1930	
France	Gold and silver.	Franc		.1930	Member Latin Union; gold is actual standard.
Germany	Gold	Mark		.2382	
Great Britain	do	Pound sterling		4.8665	
Greece	Gold and silver.	Drachma		.1930	Do.
Guatemala	Silver	Peso		.4975	Currency: Inconvertible paper.
Haiti	Gold	Gourde		.2000	Do.
Honduras	Silver	Peso		.4975	Currency; bank notes.
India (British)	Gold	Rupee		.4866	(10 rupees equal 1 pound sterling.)
Indo-China	Silver	Piaster		.5373	
Italy	Gold	Lira		.1930	Member Latin Union; gold is actual standard.
Japan	do	Yen		.4985	
Liberia	do	Dollar		1.0000	Currency: Depreciated silver token coins. Customs duties are collected in gold
Mexico	do	Peso		.4985	
Netherlands	do	Guilder (florin)		.40.0	
Newfoundland	do	Dollar		1.0000	
Nicaragua	do	Cordoba		1.0000	
Norway	do	Krone		.2680	
Panama	do	Balboa		1.0000	
Paraguay	do	Peso (Argentine)		.9648	Currency: Depreciated Paraguayan paper currency.
Persia	Silver	Kran		.0916	Currency: Silver circulating above its metallic value. Gold coin is a commodity only, normally worth double the silver.
Peru	Gold	Libra		4.8665	
Philippine Islands	do	Peso		.5000	
Portugal	do	Escudo		1.0805	Currency: Inconvertible paper.
Rumania	do	Leu		.1930	
Russia	do	Ruble		.5146	

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Estimates by the Director of the Mint of the values of foreign coins—Continued.

Country.	Legal standard.	Monetary unit.	Value in terms of U. S. money.	Remarks.
Salvador	Gold	Colon	$0.5000	
Santo Domingo	do	Dollar	1.0000	
Serbia	do	Dinar	.1930	
Siam	do	Tical	.3709	
Spain	Gold and silver.	Peseta	.1930	Valuation is for gold peseta; currency is notes of the Bank of Spain.
Straits Settlements	Gold	Dollar	.5678	
Sweden	do	Krona	.2680	
Switzerland	do	Franc	.1930	Member Latin Union; gold is actual standard.
Turkey	do	Piaster	.0140	(100 piasters equal to the Turkish £.)
Uruguay	do	Peso	1.0342	
Venezuela	do	Bolivar	.1930	

(T. D. 38972.)

Accounts current.

Method of rendering accounts in cases where disbursements from all appropriations are covered by one bond.

TREASURY DEPARTMENT, *January 5, 1922.*

To Collectors of Customs:

The department has adopted the practice of requiring only one bond to cover disbursements from all appropriations by collectors of customs, including expenditures on account of the Coast Guard and Supervising Architect.

In order that the general accounting office may have a proper record of all the transactions collectors are instructed to execute in full Customs Form 4941 and transfer the totals from this form to line 18 on Customs Form 4939. Form 4941 is to be forwarded with the accounts to the Division of Customs.

This procedure is to be followed beginning with the accounts for December, 1921, where these have not been forwarded, upon receipt of these instructions. If the December accounts have been forwarded to the department, Cat. 4941 is to be executed as above indicated and transmitted to the Division of Customs.

(108800.) ELMER DOVER, *Assistant Secretary.*

(T. D. 38973.)

Drawback.

Synopsis of drawback decisions issued between November 28, 1921, and January 7, 1922, inclusive.

(A) *Braid, straw.*—Straw braid, bleached, or bleached and dyed, by the Monte Christi Panama Hat Co., of New York, N. Y., for the account of its customers.

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A record shall be kept in the manner described in the sworn statement of the producer dated November 14, 1921, showing, in the case of each lot of straw braid bleached or bleached and dyed for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of the imported straw braid used, and the quantity of finished straw braid obtained. A sworn abstract from such records shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported straw braid used in the production of the exported bleached or bleached and dyed straw braid, as shown by the abstract from the record provided for above.

Drawback may be allowed under these regulations on bleached or bleached and dyed straw braid exported on or after September 22, 1921.

Sworn statement dated November 14, 1921, transmitted to the collector of customs at New York, N. Y., on November 29, 1921. (106934.) (Signed) EDWARD CLIFFORD, *Assistant Secretary.*

(B) *Extracts, flavoring.*—Manufactured by the Crescent City Carbonate Co., of New Orleans, La., with the use of domestic taxpaid alcohol.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer dated September 30, 1921, showing, in the case of each lot of flavoring extract manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of the domestic taxpaid alcohol used, the quantity and kind of finished product obtained, the number and size of containers in which packed, and the quantity of domestic taxpaid alcohol appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the tax paid on the quantity of domestic alcohol appearing in the exported flavoring extracts, as shown by the abstract from the manufacturing record.

Rate effective on and after June 20, 1921.

Sworn statement dated September 30, 1921, transmitted to the collector of customs at New Orleans, La., on December 3, 1921. (104569–24.) (Signed) EDWARD CLIFFORD, *Assistant Secretary.*

(C) *Fruit, canned.*—Produced by the Golden State Canneries, of Los Angeles, Calif., at its various factories, with the use of imported refined sugar, or refined sugar produced wholly or in part from imported raw sugar.

Records shall be kept and methods pursued at each of the factories in accordance with the sworn statement of the manufacturer, dated August 22, 1921, and at the end of each canning season there shall be

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filed an abstract from the factory records showing, as to the canned fruit of each kind, grade and size, the quantity packed with the use of duty-paid sugar, stated in terms of cans and cases, and the quantity of sugar from each delivery lot used in packing the same. With such abstract there shall be filed a certificate of manufacture in the form provided by article 866 of the Customs Regulations of 1915, showing the particulars of importation of each delivery lot of duty-paid sugar received at the factory during the canning season.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of sugar used in packing the exported fruit, such quantity to be determined by prorating the aggregate quantity of sugar used during the season, as shown by the abstract from the manufacturing records, to the canned fruit of each kind, grade and size, in accordance with a schedule which will be furnished your office by the special agent at your port pursuant to instructions this day issued to that officer.

Rate effective on and after July 8, 1920.

Sworn statement dated August 22, 1921, transmitted to the collector of customs at Los Angeles, Calif., on December 3, 1921. (103746–7.) (Signed) EDWARD CLIFFORD, *Assistant Secretary.*

(D) *Malt, barley.*—Manufactured by the Froedtert Malting Co., of Milwaukee, Wis., at its factories at Milwaukee and Greenfield, Wis., with the use of imported barley.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer dated December 2, 1921, showing, in the case of each lot of barley malt manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, value, and the identity of the imported barley used and the quantities and values of the barley malt and barley sprouts obtained, together with the quantity and value of the waste resulting, if any. A sworn abstract from such manufacturing record shall be filed with the drawback entry or certificate of manufacture.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported barley used in the manufacture of the exported barley malt, as shown by the abstract from the manufacturing record. The drawback shall be distributed to the principal product, malt, and the by-product, malt sprouts, in accordance with the provisions of the drawback law as interpreted by the department in T. D. 33809. If any valuable waste is recovered the quantity of imported material which may be taken as a basis for the allowance of drawback shall be reduced by the quantity which the value of the waste will replace.

Rate effective on and after October 15, 1921.

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Sworn statement dated December 2, 1921, transmitted to the collector of customs at New York, N. Y., on January 4, 1922. (109748.) (Signed) ELMER DOVER, *Assistant Secretary.*

(E) *Mantles, kerosene lamp.*—Manufactured by the Mantle Lamp Co. of America, of Chicago, Ill., with the use of one or more of the following imported materials: Ramie, thorium nitrate, and asbestos cord, or with the use of such articles manufactured in the United States from imported materials by manufacturers whose products are covered by drawback rates now existing or hereafter promulgated.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer, dated November 26, 1921, showing, in the case of each lot of mantles manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, value, and identity of each kind of imported material used, the number and size of the finished mantles obtained, and the quantity of each kind of waste resulting, together with the value thereof, if any. A sworn abstract from such manufacturing record shall be filed with the certificate of manufacture or drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported material used in the manufacture of the exported mantles, as shown by the abstract from the manufacturing record, less the quantity which the value, if any, of the waste will replace.

Rate effective on and after September 6, 1921.

Sworn statement dated November 26, 1921, transmitted to the collector of customs at Chicago, Ill., on December 8, 1921. (109732.) (Signed) EDWARD CLIFFORD, *Assistant Secretary.*

(F) *Medicinal preparation; "Vacher Balm."*—Manufactured by E. W. Vacher (Inc.), of New Orleans, La., with the use of imported menthol and oil of eucalyptus.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer dated November 28, 1921, showing, in the case of each lot of Vacher Balm manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantities and identity of the imported menthol and oil of eucalyptus used, the quantity of finished product obtained, and the number and size of containers in which packed. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported menthol and oil of eucalyptus used in the manufacture of the exported Vacher Balm, as shown by the abstract from the manufacturing record.

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Rate effective on and after July 25, 1921.

Sworn statement dated November 28, 1921, transmitted to the collector of customs at New Orleans, La., on December 31, 1921. (109473.) (Signed) ELMER DOVER, *Assistant Secretary.*

(G) *Milk, condensed.*—Manufactured by the Empire State Dairy Co., of Brooklyn, N. Y., at its factory at Greene, N. Y., with the use of imported refined sugar or sugar refined wholly or in part from imported raw sugar.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer dated November 2, 1921, showing, in the case of each lot of condensed milk manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of the refined sugar used, and the quantity and brand name of the condensed milk obtained. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of refined sugar used in the manufacture of the exported condensed milk, as shown by the abstract from the manufacturing record.

Rate effective on and after August 25, 1921.

Sworn statement dated November 2, 1921, transmitted to the collector of customs at New York, N. Y., on November 29, 1921. (103025–49.) (Signed) EDWARD CLIFFORD, *Assistant Secretary.*

(H) *Rods, radius, for automobiles.*—Manufactured by the McKinnon Dash Co., of Buffalo, N. Y., with the use of imported steel tubes.

The drawback allowance for each radius rod exported shall not exceed the duty paid, less 1 per cent thereof, on two steel tubes of the kind and size used in the manufacture thereof.

Rate effective on and after October 20, 1921.

Sworn statement dated December 2, 1921, transmitted to the collector of customs at Buffalo, N. Y., on January 4, 1922. (109780.) (Signed) ELMER DOVER, *Assistant Secretary.*

(I) *Sirups.*—Sugar sirups and refiners' sirups, either straight or blended, produced wholly or in part from imported sugar, with or without the addition of imported molasses and domestic glucose or either of them, by the Dunbar Molasses & Syrup Co. (Inc.), at its factory at Brooklyn, N. Y.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer, dated November 29, 1921, showing, in the case of each lot of sirup manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of each kind of imported

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material used and the quantity and kind of finished sirup obtained. A sworn abstract from such manufacturing record shall be filed with the drawback entry or certificate of manufacture.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported material used in the manufacture of the exported sirups, as shown by the abstract from the manufacturing record.

Rate effective on and after June 14, 1921.

Sworn statement dated November 29, 1921, transmitted to the collector of customs at New York, N. Y., on December 17, 1921. (62354.) (Signed) EDWARD CLIFFORD, *Assistant Secretary.*

(J) *Webbing, elastic, neckties, garment trimmings, and similar materials.*—Manufactured by the Hope Webbing Co., of Providence, R. I., with the use of imported artificial silk yarn.

A manufacturing record shall be kept in the manner described in the sworn statements of the manufacturer dated November 28 and December 1, 1921, showing, in the case of each lot of articles manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of the imported artificial silk yarn used, the quantity of each kind of finished articles obtained, and the quantity of waste incurred, together with the value thereof, if any. A sworn abstract from such manufacturing record shall be filed with the drawback entry or certificate of manufacture.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported artificial silk yarn used in the manufacture of the exported articles, as shown by the abstract from the manufacturing record, such quantity to be reduced accordto the quantity of imported material which the value, if any, of the waste will replace.

Rate effective on and after September 30, 1921.

Sworn statements dated November 28 and December 1, 1921, transmitted to the collector of customs at Boston, Mass., on December 16, 1921. (103016–8.) (Signed) EDWARD CLIFFORD, *Assistant Secretary.*

(K) *Wool, pulled, washed, and graded.*—Produced by E. S. Parkhurst & Co. (Inc.), of Gloversville, N. Y., for the account of the Liberty Dressing Co. (Inc.), or H. R. Bradt, of Gloversville, N. Y., or for the account of others, from wool pulled from imported skins by the Liberty Dressing Co.

Records shall be kept in the manner described in the sworn statements of the above-named firms dated November 30, November 29, and November 30, 1921, respectively, showing; in the case of each lot of pulled, washed, and graded wool, produced for exportation with benefit of drawback, the lot number and date of production

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thereof, the quantity and identity of the imported wool used and the quantity of each grade of wool obtained. A sworn abstract from such records shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported wool on skins used in the production of the exported pulled, washed, and graded wool, as shown by the abstract from the records provided for above.

Rate effective on and after September 2, 1921.

Sworn statements dated November 30, November 29, and November 30, 1921, respectively, transmitted to the collector of customs at New York, N. Y., on December 31, 1921. (100768–9.) (Signed) ELMER DOVER, *Assistant Secretary.*

(L) *Wool, pulled, washed, and graded.*—Produced by the Wood & Hyde Co. (Inc.), of Gloversville, N. Y., from imported wool on the skin.

A record shall be kept in the manner described in the sworn statement of the producer, dated November 9, 1921, showing, in the case of each lot of pulled, washed, and graded wool manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of the imported wool used, and the quantity of each grade of wool obtained, together with the quantity of waste incurred and its value, if any. A sworn abstract from such record shall be filed with the drawback entry or certificate of manufacture.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported wool used in the production of the pulled, washed, and graded wool, as shown by the abstract from the record provided for above. In case the entire quantity of wool from each import lot is not exported, the drawback shall be distributed to the several grades of wool according to their relative values at the time of separation.

Rate effective on and after October 14, 1921.

Sworn statement dated November 9, 1921, transmitted to the collector of customs at New York, N. Y., on December 17, 1921. (100768–8.) (Signed) EDWARD CLIFFORD, *Assistant Secretary.*

(T. D. 38974.)

Foreign currencies—Rates of exchange.

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), emergency tariff act of May 27, 1921.

TREASURY DEPARTMENT, *January 7, 1922.*

To Collectors of Customs and Others Concerned:

The appended table of the values of certain foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve

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Bank of New York under the provisions of section 403 (*c*), act of May 27, 1921, during the period from December 16, 1921, to January 5, 1922, both inclusive, is published for the information of collectors of customs and others concerned.

(93000.) ELMER DOVER, *Assistant Secretary*.

Values of foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), emergency tariff act of May 27, 1921.

PERIOD DECEMBER 16 TO 22, 1921, INCLUSIVE.

Country.	Name of currency.	Dec. 16.	Dec. 17.	Dec. 19.	Dec. 20.	Dec. 21.	Dec. 22.
Europe:							
Austria	Krone	$0.000381	$0.000392	$0.000402	$0.000398	$0.000398	$0.000413
Belgium	Franc	.0760	.0755	.0772	.0777	.0770	.0759
Bulgaria	Lev	.00745	.007575	.007383	.00755	.007475	.007183
Czechoslovakia	Krone	.012106	.0123	.012413	.012634	.013313	.014156
Denmark	do	.1935	.1986	.2093	.2072	.2019	.2016
England	Pound sterling	4.1783	4.1769	4.1998	4.2127	4.2102	4.1966
Finland	Markka	.019014	.019329	.019429	.019714	.019557	.019529
France	Franc	.0789	.0785	.0802	.0810	.0801	.0790
Germany	Reichsmark	.005055	.004958	.005361	.00562	.005693	.005430
Greece	Drachma	.0418	.0416	.0418	.0417	.0417	.0414
Holland	Florin or guilder	.3632	.3645	.3656	.3672	.3683	.3676
Hungary	Krone	.001459	.001470	.001483	.001495	.001520	.001566
Italy	Lira	.0456	.0451	.0452	.0458	.0454	.0444
Norway	Krone	.1545	.1546	.1577	.1579	.1575	.1569
Poland	Polish mark	.000303	.000315	.000313	.000315	.000333	.000338
Portugal	Escuda	.0790	.0787	.0806	.0795	.0800	.0795
Rumania	Leu	.00844	.008292	.008625	.008375	.008242	.007825
Serbia	Dinar	.01547	.01561	.01563	.01557	.01565	.01564
Spain	Peseta	.1466	.1463	.1485	.1498	.1491	.1485
Sweden	Krona	.2449	.2467	.2493	.2498	.2497	.2496
Switzerland	Franc	.1938	.1945	.1948	.1951	.1950	.1950
Yugoslavia	Krone	.003863	.003844	.003803	.003838	.003909	.003881
Asia:							
Hongkong	Dollar	.5433	.5473	.5494	.5488	.5473	.5447
Shanghai	Tael	.7529	.7591	.7636	.7638	.7606	.7567
Do	Mexican dollar	.5485	.5523	.5520	.5525	.5568	.5469
India	Rupee	.2772	.2769	.2793	.2796	.2789	.2775
Japan	Yen	.4798	.4794	.4795	.4797	.4798	.4798
Java	Florin or guilder	.3552	.3538	.3593	.3599	.3618	.3612
Singapore (S. S.)	Dollar	.4700	.4658	.4758	.4750	.4617	.4721
North America:							
Canada	do	.924063	.925938	.928438	.935156	.934063	.933594
Cuba	Peso	.996462	.996669	.996669	.996462	.996046	.996046
Mexico	do	.49225	.49175	.4884	.486875	.48375	.484688
Newfoundland	Dollar	.922083	.923333	.927083	.932917	.932292	.931458
South America:							
Argentina	Peso (gold)	.7496	.7534	.7558	.7601	.7614	.7607
Brazil	Milreis	.1267	.1253	.1265	.1271	.1274	.1254
Uruguay	Peso	.6917	.6926	.6937	.6971	.7002	.6986

PERIOD DECEMBER 23 TO 29, 1921, INCLUSIVE.

Country.	Name of currency.	Dec. 23.	Dec. 24.	Dec. 27.	Dec. 28.	Dec. 29.
Europe:						
Austria	Krone	$0.000397	$0.000393	$0.000405	$0.000397	$0.000394
Belgium	Franc	.0761	.0766	.0773	.0771	.0767
Bulgaria	Lev	.007293	.007190	.007183	.007192	.007092
Czechoslovakia	Krone	.013844	.013864	.013941	.014138	.014388
Denmark	do	.2015	.2016	.2014	.2001	.1988
England	Pound sterling	4.1845	4.1902	4.2052	4.1930	4.1973
Finland	Markka	.019586	.019617	.019614	.019086	.01900
France	Franc	.0793	.0799	.0806	.0805	.0800
Germany	Reichsmark	.005276	.005343	.005470	.005375	.005430
Greece	Drachma	.0415	.0416	.0416	.01416	.0419
Holland	Florin or guilder	.3657	.3659	.3660	.3667	.3665
Hungary	Krone	.001584	.001579	.001631	.001609	.0016
Italy	Lira	.0443	.0445	.0445	.0430	.0426
Norway	Krone	.1558	.1569	.1582	.1599	.1592
Poland	Polish mark	.000328	.000338	.000330	.00033	.000335
Portugal	Escuda	.0813	.0780	.0796	.0796	.0767

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Values of foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), emergency tariff act of May 27, 1921—Continued.

PERIOD DECEMBER 23 TO 29, 1921, INCLUSIVE—continued.

Country.	Name of currency.	Dec. 23.	Dec. 24.	Dec. 27.	Dec. 28.	Dec. 29.
Europe—Continued.						
Rumania	Leu	$0.007558	$0.007585	$0.007625	$0.00709	$0.007667
Serbia	Dinar	.01559	.015625	.01571	.01565	.0156
Spain	Peseta	.1485	.1489	.1490	.1495	.1491
Sweden	Krona	.2490	.2490	.2494	.2496	.2497
Switzerland	Franc	.1949	.1951	.1952	.1952	.1952
Yugoslavia	Krone	.003869	.003893	.003913	.003884	.003864
Asia:						
Hongkong	Hongkong dollar	.5434	.5446	.5438	.....	.....
China	....do	.....	.....	.....	.5471	.5518
Shanghai	Tael	.7532	.7533	.7513	.7550	.7533
Do	Mexican dollar	.5480	.5450	.5467	.....	.....
China	....do	.....	.....	.....	.5500	.5492
India	Rupee	.2772	.2769	.2765	.2787	.2788
Japan	Yen	.4790	.4793	.4795	.4796	.4794
Java	Florin or guilder	.3613	.3618	.3598	.3640	.3607
Singapore (S. S.)	Dollar	.4608	.4675	.4725	.4683	.4800
North America:						
Canada	....do	.934063	.93625	.938438	.94125	.942266
Cuba	Peso	.996046	.996255	.996046	.996046	.996046
Mexico	....do	.482125	.481875	.48275	.483625	.483875
Newfoundland	Dollar	.932292	.934167	.937292	.938958	.940313
South America:						
Argentina	Peso (gold)	.7565	.7508	.7533	.7552	.7551
Brazil	Milreis	.1262	.1254	.1261	.1267	.1261
Uruguay	Peso	.7004	.6963	.7047	.7125	.7201

PERIOD DECEMBER 30, 1921, TO JANUARY 5, 1922, INCLUSIVE.

Country.	Name of currency.	Dec. 30.	Dec. 31.	Jan. 3.	Jan. 4.	Jan. 5.
Europe:						
Austria	Krone	$0.000397	$0.000389	$0.000381	$0.000389	$0.000353
Belgium	Franc	.0767	.0773	.0765	.0764	.0759
Bulgaria	Lev	.007192	.007142	.007058	.007192	.00715
Czechoslovakia	Krone	.014491	.01475	.015481	.016013	.0160
Denmark	....do	.1997	.2012	.2002	.1994	.1988
England	Pound sterling	4.2081	4.2123	4.2089	4.2030	4.1865
Finland	Markka	.019243	.019157	.019271	.0193	.018914
France	Franc	.0804	.0813	.0803	.0802	.0796
Germany	Reichsmark	.005396	.005450	.005298	.005176	.005028
Greece	Drachma	.0418	.0419	.0422	.0424	.0429
Holland	Florin or guilder	.3691	.3698	.3684	.3677	.3652
Hungary	Krone	.001619	.001645	.001634	.001722	.001645
Italy	Lira	.0433	.0438	.0426	.0428	.0427
Norway	Krone	.1605	.1607	.1582	.1562	.1547
Poland	Polish mark	.000329	.000334	.000332	.000338	.000338
Portugal	Escuda	.0768	.0791	.0782	.0778	.0782
Rumania	Leu	.007160	.00814	.00801	.00778	.00758
Serbia	Dinar	.01545	.01538	.01509	.01489	.10468
Spain	Peseta	.1497	.1498	.1495	.1493	.1485
Sweden	Krona	.2517	.2522	.2497	.2491	.2465
Switzerland	Franc	.1954	.1950	.1942	.1940	.1930
Yugoslavia	Krone	.003841	.003788	.003766	.003703	.003588
Asia:						
China	Hongkong dollar	.5459	.5452	.5456	.5524	.5490
Shanghai	Tael	.7489	.7471	.7438	.7416	.7399
China	Mexican dollar	.5408	.5433	.5450	.5473	.5450
India	Rupee	.2792	.2796	.2793	.2795	.2779
Japan	Yen	.4791	.4792	.4792	.4785	.4786
Java	Florin or guilder	.3660	.3677	.3628	.3618	.....
Singapore (S. S.)	Dollar	.4800	.4767	.4817	.4800	.4700
North America:						
Canada	.do	.946563	.952031	.952656	.955469	.947734
Cuba	Peso	.996045	.995838	.996877	.998126	.997919
Mexico	....do	.483438	.4835	.4830	.483625	.4840
Newfoundland	Dollar	.945208	.940792	.950208	.953333	.944375
South America:						
Argentina	Peso (gold)	.7562	.7568	.7579	.7561	.7530
Brazil	Milreis	.1262	.1265	.1264	.1268	.1258
Uruguay	Peso	.7199	.7204	.7188	.7204	.7127

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(T. D. 38975.)

Common carrier.

Approval of common carriers' bonds.

TREASURY DEPARTMENT, *January 9, 1922.*

To Collectors of Customs and Others Concerned:

The common carriers' bonds of the following transportation companies have been approved by the department:

Bond of the Outer Harbor Dock & Wharf Co., dated November 14, 1921, approved January 4, 1922, filed with the collector of customs at Los Angeles, Calif.

Bond of the Detroit, Toledo & Ironton Railroad Co., dated November 30, 1921, approved December 30, 1921, filed with the collector of customs at Detroit, Mich.

Bond of the C. E. Giles Co., dated December 6, 1921, approved December 29, 1921, filed with the collector of customs at Boston, Mass.

Bond of the Southern Pacific Co., dated December 14, 1921, approved December 29, 1921, filed with the collector of customs at New York, N. Y.

(107298.) ELMER DOVER, *Assistant Secretary.*

(T. D. 38976.)

Rugs—Classification—Appeal.

Appeal from decision of the Board of United States General Appraisers, dated November 17, 1921 (Abstract 44587), holding certain rugs to be dutiable at the rate of 35 per cent ad valorem under paragraph 293, tariff act of 1913.

TREASURY DEPARTMENT, *January 9, 1922.*

SIR: The department is in receipt of your letter of the 5th instant, inviting attention to a decision of the Board of United States General Appraisers, dated November 17, 1921 (Abstract 44587), in which the board held that certain rugs classified as dutiable at the rate of 50 per cent ad valorem under paragraph 300 of the tariff act of October 3, 1913, were properly dutiable at the rate of 35 per cent ad valorem under paragraph 293 of the said act.

In accordance with your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision, in conformity with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ELMER DOVER,

(101464.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 38977.)

Sliced deer horn—Classification.

Sliced deer horn will continue to be assessed with duty as a medicinal preparation.

TREASURY DEPARTMENT, *January 9, 1922.*

SIR: Your attention is directed to a decision of the Board of United States General Appraisers, dated November 9, 1921 (T. D. 38905), in which sliced deer horn classified by you as a medicinal preparation, dutiable under paragraph 17 of the tariff act of October 3, 1913, was held by the board to be free of duty under paragraph 511 of the said act.

Owing to the unsatisfactory nature of the record, no appeal will be taken. The department does not acquiesce, however, in the said decision and is advised by the Assistant Attorney General that a new case will be made on the issue involved.

Pending a final determination of the question, therefore, you will continue to assess duty on merchandise of the character in question under paragraph 17 of the tariff act of October 3, 1913, as a medicinal preparation.

Respectfully, ELMER DOVER,
(104882.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *San Francisco, Calif.*

(T. D. 38978—G. A. 8497.)

Value of phonographs.

United States General Appraisers, New York, January 12, 1922.

In the matter of reappraisement 4302-A of E. L. McConnaughey & Co.

[Affirmed.]

Barnes, Chilvers & Halstead (*Albert McC. Barnes* of counsel) for the importers.

William W. Hoppin, Assistant Attorney General (*Martin T. Baldwin* and *G. F. Lamb*, special attorneys), for the United States.

SULLIVAN, General Appraiser: The merchandise under consideration consists of phonographs shipped from Toronto, Canada, by W. H. Banfield & Sons (Ltd.) to the Stewart Phonograph Co. (Inc.), of Chicago, on February 17, 1921.

The merchandise was invoiced and entered at $5 per machine and appraised at $8.50 per machine.

There are three questions at issue: (1) Was there a market for the merchandise in Canada? (2) If so, what was the market price? (3) Is the merchandise freely offered for sale to all purchasers in Canada?

The facts are not in serious dispute.

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The manufacturer of the machines is W. H. Banfield & Sons (Inc.), of Toronto, Canada. The Stewart Phonograph Co. (Inc.) are either the purchasers from or the sales agents of the manufacturer.

It is established beyond question that the Stewart Phonograph Co. receive the entire output of the manufacturer. They pay to the manufacturer $5 for each machine. It is shown the manufacturer does not sell any of the machines to any other purchaser in Canada. The Stewart Phonograph Co., having the exclusive control of the machines, then sell to dealers throughout the Dominion. They require the dealers thus purchasing to sell the machines at a certain price to the retail trade. They also require that the retailer sell the machine to the final purchaser at a certain price. It is evident they are seeking to control the market.

The price at which the machines are purchased by the Stewart Phonograph Co. from the manufacturer, to wit, $5 per machine, can not be the market price. The manufacturer is not offering the merchandise freely as provided by paragraph R, Section III, tariff act of 1913. The sale is entirely to one single corporation. Therefore the merchandise is not freely offered, and does not fall within that paragraph.

That there is a market for the machines in Canada is unquestioned. The catalogue of the Stewart Phonograph Co., offered in evidence, states that hundreds of thousands of Stewart Phonographs have been and are being offered and sold in Canada, the United States, and throughout the world.

In the testimony of the witness Reimers, who at one time was connected with the Stewart Phonograph Co., both in the United States and Canada, appear unequivocally the number and quantity sold throughout Canada.

The report of the special agent, that is not denied, sets forth numerous purchasers throughout the entire Dominion of Canada In the brief of counsel he admits practically that the Stewart Phonograph Co. are selling to all classes of dealers, but he insists that the manufacturer is not offering the machines to all purchasers, and that in effect the sale by the Stewart Phonograph Co. does not constitute the market. As the manufacturer would not sell to any one in Canada, except the Stewart Phonograph Co. of Toronto, and that fact being established, the price paid for the machine by the Stewart Phonograph Co. to the manufacturer, can not be considered as establishing a market value. In fact, the Stewart Phonograph Co. is the original sales manufacturer of these machines, and must stand in the shoes, as far as the market is concerned, of the manufacturer.

It is contended that as the Stewart Phonograph Co. restricts those to whom it sells as to the price at which they may sell the merchandise

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to others, that thereby their sales do not constitute a free and open market as provided and required by statute. The statute is as follows:

That such actual market value shall be held to be the price at which such merchandise is freely offered for sale to all purchasers in said markets, in the usual wholesale quantities.

What does this statute require? That the "actual market value shall be held to be the price at which such merchandise is *freely offered* for sale *to all purchasers* in said markets in the *usual* wholesale quantities." It then continues "and the price which the seller, shipper, or owner would have received, and was willing to receive." This statute does not provide that the seller may supervise or qualify what the purchaser may do with his purchases. There must be a free and open market. Evidently any dealer can purchase from the Stewart Phonograph Co. any and all machines he may wish. The only requirement is not with reference to what he pays for the machines, but the price at which he may sell to others. I am not interested in that condition, but to ascertain the wholesale market, and such market to be a free one as provided by the statute should permit the sale of the merchandise to all purchasers at a price. That price makes the market. Now, if the manufacturer or controller of the product exacts of the purchaser an agreement that he shall not sell to others for less than a certain sum he is not thereby forestalling the market, and is not thereby destroying the free and open market between the dealer and wholesaler.

These questions have been passed on by the Supreme Court of the United States with reference to requiring purchasers to sell phonograph records and medicine at a certain price to the consumer. The litigation arose under the Sherman Antitrust Act. It was held that the Sherman Antitrust Act did not restrict a manufacturer from requiring of the purchaser of the article to sell to the consumer at a certain price so long as there was competition in the purchase from the manufacturer. That is a more stringent statute than paragraph R, Section III, of the act of 1913. The latest case that I have found on this matter is United States *v.* Colgate (250 U. S., 300).

In sustaining the right of Colgate & Co. to require those to whom they sold to resell at a stipulated price, the court stated:

The purpose of the Sherman Act is to prohibit monopolies, contracts and combinations which probably would unduly interfere with the free exercise of their rights by those engaged, or who wish to engage, in trade and commerce—in a word to preserve the right of freedom to trade. In the absence of any purpose to create or maintain a monopoly, the act does not restrict the long recognized right of trader or manufacturer engaged in an entirely private business freely to exercise his own independent discretion as to parties with whom he will deal. And, of course, he may announce in advance the circumstances under which he will refuse to sell. "The trader or manufacturer, on the other hand, carries on an entirely private business, and can sell

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to whom he pleases."—United States *v.* Trans-Missouri Freight Asso. (166 U. S., 290, 320; 41 L. ed., 1007; 17 Sup. Ct. Rep., 540). "A retail dealer has the unquestioned right to stop dealing with a wholesaler for reasons sufficient to himself, and may do so because he thinks such dealer is acting unfairly in trying to undermine his trade."

This satisfactorily establishes the right in this country, in the face of the Sherman Antitrust Act, to do the things the Stewart Phonograph Co. are claiming the right to do in Canada. They do not restrict any one in purchasing. Their merchandise is freely offered to all who will comply with the regulations with reference to sale; there are no regulations with reference to purchase.

Recently this question was before Board 2 of the Board of United States General Appraisers in the Goodyear Tire & Rubber Co.'s case, G. A. 8477 (T. D. 38906), wherein it was found the Goodyear Tire & Rubber Co. were selling their wares in Canada at different prices, restricting themselves to purchasers who were financially able to buy, and not selling to certain purchasers, whether financially able to buy or not. It was held by the board that the action of the Goodyear Tire & Rubber Co. was legal, and that their sales were within paragraph R, Section III, of the act of 1913.

Therefore, it is unnecessary to follow the contention of the importers that the value should be based on the cost of production. Having found a market I am precluded from looking into that fact.

The report of the special agent indicates that the Stewart Phonograph Co. and the manufacturer are practically one and the same institution. I do not base my judgment of this case on that fact. It is based entirely on the proposition that there is a market for these machines in Canada, and that they are freely offered for sale throughout the Dominion to wholesale dealers therein at from $8.50 to $15 per machine.

I therefore find the market value in this reappraisement to be $8.50 per machine. The action of the appraiser is affirmed.

(T. D. 38979.)

Foreign currencies—Rates of exchange.

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), emergency tariff act of May 27, 1921.

TREASURY DEPARTMENT, *January 14, 1922.*

To Collectors of Customs and Others Concerned:

The appended table of the values of certain foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), act of May 27, 1921, during the period from January 6 to January 12, 1922, both inclusive, is published for the information of collectors of customs and others concerned.

(103512.) ELMER DOVER, *Assistant Secretary.*

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Values of foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), emergency tariff act of May 27, 1921.

PERIOD JANUARY 6 TO 12, 1922, INCLUSIVE.

Country.	Name of currency.	Jan. 6.	Jan. 7.	Jan. 9.	Jan. 10.	Jan. 11.	Jan. 12.
Europe:							
Austria	Krone	$0.000334	$0.000339	$0.000355	$0.000348	$0.000353	$0.000334
Belgium	Franc	.0766	.0770	.0791	.0799	.0794	.0800
Bulgaria	Lev	.007175	.007267	.007258	.007167	.007483	.0071
Czechoslovakia	Krone	.016169	.016247	.016372	.016366	.016141	.016022
Denmark	do	.1988	.1989	.1979	.1985	.1983	.1999
England	Pound sterling	4.1978	4.2039	4.2211	4.2322	4.2256	4.2342
Finland	Markka	.018757	.018786	.018757	.018714	.018643	.0185
France	Franc	.0801	.0804	.0824	.0832	.0828	.0835
Germany	Reichsmark	.005269	.005395	.005876	.005775	.005672	.005547
Greece	Drachma	.0433	.0438	.0435	.0439	.0438	.0437
Holland	Florin or guilder	.3663	.3664	.3673	.3680	.3673	.3682
Hungary	Krone	.001633	.001641	.001675	.001667	.00165	.001630
Italy	Lira	.0431	.0432	.0429	.0432	.0431	.0437
Norway	Krone	.1553	.1558	.1562	.1558	.1559	.1570
Poland	Polish mark	.000338	.00035	.000338	.000345	.000349	.000354
Portugal	Escuda	.0782	.0773	.0781	.0775	.0774	.0780
Rumania	Leu	.0081	.00834	.00829	.008275	.00816	.00813
Serbia	Dinar	.0141	.0146	.0144	.01424	.0133	.01325
Spain	Peseta	.1491	.1488	.1497	.1500	.1497	.1499
Sweden	Krona	.2473	.2472	.2484	.2497	.2491	.2495
Switzerland	Franc	.1933	.1931	.1933	.1936	.1937	.1939
Yugoslavia	Krone	.003475	.003572	.003594	.003431	.0033	.00332
Asia:							
China	Hongkong dollar	.5484	.5506	.5548	.5569	.5541	.5504
Shanghai	Tael	.7420	.7436	.7495	.7511	.7482	.7468
China	Mexican dollar	.5412	.5458	.5478	.5463	.5456	.5446
India	Rupee	.2788	.2784	.2791	.2797	.2795	.2791
Japan	Yen	.4769	.4769	.4775	.4777	.4772	.4769
Singapore (S. S.)	Dollar	.4717	.4750	.4733	.4817	.4800	.4817
North America:							
Canada	do	.944063	.935469	.939375	.942969	.945156	.948594
Cuba	Peso	.997919	.998542	.997919	.998334	.997712	.997088
Mexico	do	.4850	.485594	.4884	.489469	.488225	.48775
Newfoundland	Dollar	.942083	.93375	.936667	.940417	.944167	.94625
South America:							
Argentina	Peso (gold)	.7550	.7542	.7577	.7579	.7588	.7584
Brazil	Milreis	.1258	.1261	.1260	.1264	.1267	.1266
Uruguay	Peso	.7092	.7096	.7097	.7109	.7209	.7219

(T. D. 38980.)

No consul.

Certification of invoices from Buenaventura, Colombia.

TREASURY DEPARTMENT, *January 20, 1922.*

To Collectors of Customs and Others Concerned:

The Secretary of State has recommended to the department that the city of Buenaventura, Colombia, be placed on the no-consul list.

In accordance with such recommendation, invoices of merchandise shipped from Buenaventura may be accepted by collectors of customs when certified pursuant to the provisions of section 2844, Revised Statutes.

(101208.) ELMER DOVER, *Assistant Secretary.*

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(T. D. 38981.)

Schedule for hearings by the Board of United States General Appraisers.

Schedule for hearings of cases by the Board of United States General Appraisers at ports other than the port of New York for the calendar year 1922.

TREASURY DEPARTMENT, *January 20, 1922.*

To Officers of the Customs and Others Concerned:

The appended schedule of hearings by the Board of United States General Appraisers is published for your information.

(34583.) ELMER DOVER, *Assistant Secretary.*

Dockets for the hearings of cases by the boards of United States general appraisers and individual general appraisers at ports other than New York, 1922.

OFFICE OF THE BOARD OF UNITED STATES GENERAL APPRAISERS,
641 Washington Street, New York, January 17, 1922.

Under and by virtue of the authority conferred by the customs administrative act of 1890, as amended by the act of August 5, 1909, reenacted in the tariff act of October 3, 1913, and for the purpose of hearing appeals in both classification and reappraisement cases at ports other than the port of New York, the following dockets therefor are hereby promulgated:

Port.	Feb.	Mar.	Apr.	June.	Aug.	Sept.	Oct.	Nov.	Dec.
Chicago	Tues. 21			Wed. 21		Wed. 20			Tues. 5
Spokane	Tues. 28						Fri. 20		
Seattle		Thur. 2		Wed. 28			Tues. 24		
Portland		Mon. 6		Thur. 22			Fri. 27		
San Francisco		Mon. 13		Tues. 13			Tues. 31		
Los Angeles		Mon. 20		Tues. 6				Tues. 7	
El Paso		Wed. 29							
Providence		Wed. 1		Wed. 14		Tues. 5			Tues. 5
Boston		Thur. 2		Thur. 15		Wed. 6			Wed. 6
Jacksonville		Wed. 1							Wed. 13
Savannah		Mon. 6							Mon. 11
Baltimore		Thur. 9		Thur. 22		Thur. 14			Thur. 7
Philadelphia		Sat. 11		Tues. 20		Tues. 12			Tues. 5
Buffalo		Tues. 7		Tues. 20			Tues. 10		
Cleveland		Thur. 9		Thur. 22			Thur. 12		
Detroit		Fri. 10		Fri. 23			Fri. 13		
St. Louis			Thur. 6						Thur. 7
New Orleans			Tues. 11						Fri. 15
Galveston			Fri. 21						Wed. 13
Dallas			Tues. 25						Mon. 11
Kansas City			Thur. 27						
Duluth				Mon. 26		Mon. 25			
St. Paul				Tues. 27					
Minneapolis				Tues. 27					
Des Moines				Mon. 26					
Omaha				Tues. 27					
Ogdensburg					Thur. 17				
Malone					Fri. 18				
Rouses Point					Mon. 21				
St. Albans					Tues. 22				
Pittsburgh						Tues. 19	Tues. 17		
Cincinnati							Mon. 16		
Miami									Fri. 15

Whenever it shall appear to the president of the Board of General Appraisers that there are not pending at any port in the schedule herein a sufficient number of cases to warrant the visit of a general appraiser, or for other sufficient cause, he will, after due notice, extend the time appointed for such dockets to a future day.

Whenever a docket day herein fixed falls upon a holiday such docket will be called upon the day following.

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Said dockets and each of them will be called at the hour designated in the notice of hearing of the day appointed in the above schedule, and all pending cases be heard or set for trial as the general appraiser in attendance may direct.

Upon transmittal of records from ports other than New York to the Board of General Appraisers in cases in which local hearings are to be had the sample will, after being properly carded (Cat. No. 183 or 184) for identification with such records, be retained in the local office for use at such hearings, and thereafter be immediately indorsed with the board numbers and transmitted with such records to the Board of General Appraisers.

JERRY B. SULLIVAN,
President General Board of United States General Appraisers.

(T. D. 38982.)

Special agents.

Changes in the status of the special agency service, United States customs.

TREASURY DEPARTMENT, *January 23, 1922.*

The following change in the status of the special agency service, United States customs, is hereby ordered, effective February 1, 1922:

1. In accordance with the provisions of sections 2649 and 2651 of the Revised Statutes, the direction of the work relating to the examination of the books, papers, and accounts of collectors and other officers of customs and to the prevention of frauds on the customs revenue shall hereafter be performed by an officer of the special agency service to be named by the Assistant Secretary in charge of revenue.

2. The officer so named shall, on February 1, 1922, assume administrative direction of the special agency service, including special agents, customs agents, Treasury attachés, and other employees of the special agency service in Washington and in the field.

3. The officer performing these duties shall report to the Assistant Secretary in charge of revenue and operate under his immediate supervision.

4. The Chief of the Division of Customs shall cooperate with and assign to the directing agent the services of employes of the Customs Division as may be necessary for the conduct of the Washington office of the special agency service.

5. There is hereby set aside from the appropriation for the expense of collecting the revenue from customs for the fiscal year 1922, $200,000, this sum to be inclusive of the unexpended balance of the allotment of $200,000 annually made in the sundry civil appropriation bill "for the prevention and detection of frauds upon the customs revenue," the moneys so set aside to be expended during the remainder of the fiscal year 1922 for salaries and traveling expenses of the special and customs agents in Washington and in the field, Treasury attachés in the foreign service, and the necessary office and clerical assistants in Washington and in the field.

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6. In addition to the duties imposed upon the above officers by statute, all investigations relating to drawback claims and allowances, dumping, undervaluation of dutiable merchandise, frauds on the revenue, smuggling, other violations of the United States customs laws, and all changes in the system of transacting and recording the customs business shall be referred to the directing agent for investigation and report.

7. The attention of officials and employes of the Customs Division and the customs service at large is directed to T. D. 26784 of October 14, 1905, the provisions of which are hereby reaffirmed.

8. T. D. 35782 of September 30, 1916, and any other rules or regulations of the department inconsistent with or repugnant to this order are hereby revoked.

A. W. MELLON,
Secretary of the Treasury.

(T. D. 38983.)

Executive order abolishing and creating certain ports of entry.

TREASURY DEPARTMENT, *January 23, 1922.*

To Collectors of Customs and Others Concerned:

For your information and guidance, there is published below an Executive order dated January 9, 1922, abolishing various ports of entry in the customs service and creating new ports of entry in several customs collection districts.

(90740.) ELMER DOVER, *Assistant Secretary.*

EXECUTIVE ORDER.

By virtue of the authority vested in me by the act of Congress, approved August 1, 1914, making appropriations for the sundry civil expenses of the Government for the fiscal year ending June 30, 1915, the following ports of entry are hereby abolished:

In customs collection district No. 1, of which Portland, Me., is the headquarters port, Rockport, Me., Deer Isle, Me., Vinal Haven, Me., and Castine, Me.

In customs collection district No. 4, of which Boston, Mass., is the headquarters port, Barnstable, Mass., and Holyoke, Mass.

In customs collection district No. 7, of which Ogdensburg, N. Y., is the headquarters port, Chaumont, N. Y.

In customs collection district No. 10, of which New York, N. Y., is the headquarters port, Greenport and Patchogue, N. Y.

In customs collection district No. 11, of which Philadelphia, Pa., is the headquarters port, Tuckerton, N. J.

In customs collection district No. 18, of which Tampa, Fla., is the headquarters port, Port Inglis and Punta Gorda, Fla.

In customs collection district No. 22, of which Galveston, Tex., is the headquarters port, Port Lavaca, Tex.

In customs collection district No. 23, of which San Antonio, Tex., is the headquarters port, Santa Maria and Roma, Tex.

In customs collection district No. 24, of which El Paso, Tex., is the headquarters port, Boquillas, Tex.

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In customs collection district No. 25, of which San Diego, Calif., is the headquarters port, Campol, Calif.

In customs collection district No. 31, of which Juneau, Alaska, is the headquarters port, Fairbanks, Alaska.

In customs collection district No. 33, of which Great Falls, Mont., is the headquarters port, Plentywood, Mont.

In customs collection district No. 36, of which Duluth, Minn., is the headquarters port, Isle Royale, Mich.

In customs collection district No. 38, of which Detroit, Mich., is the headquarters port, Manistique and Petoskey, Mich.

In customs collection district No. 45, of which St. Louis, Mo., is the headquarters port, Cairo, Ill.

In customs collection district No. 46, of which Omaha, Nebr., is the headquarters port, Lincoln, Nebr.

By virtue of the same authority, the following ports of entry are hereby created:

In customs collection district No. 1, of which Portland, Me., is the headquarters port. Jackman, Frenchville, and Robbinston, Me.

In customs collection district No. 23, of which San Antonio, Tex., is the headquarters port, Hidalgo, Tex.

This order will become effective February 1, 1922.

WARREN G. HARDING.

THE WHITE HOUSE,
January 9, 1922.

(T. D. 38984.)

Motion to remand.

ISHIDA ET AL. *v.* UNITED STATES (No. 2061).

UNITED STATES COURT OF CUSTOMS APPEALS REVIEWS FINAL DECISIONS ONLY.

The United States Court of Customs Appeals reviews *final* decisions only of the Board of United States General Appraisers.—(Sec. 195, Judicial Code.) A motion to remand this cause to the board on the ground of the alleged improper admission of certain evidence is denied without prejudice.

United States Court of Customs Appeals, January 13, 1922.

MOTION for remand to Board of United States General Appraisers, Abstract 43792.

[Denied.]

Frank L. Lawrence (*Martin T. Baldwin* and *Thomas M. Lane* of counsel) for the motion.

William W. Hoppin, Assistant Attorney General (*David Hyams*, special attorney, of counsel), contra.

[Oral argument October 28, 1921, by Mr. Lane and Mr. Hoppin.]

Before DE VRIES, Presiding Judge, and SMITH, BARBER, and MARTIN, Associate Judges.

Per curiam:

Appellants move the court for a reversal and remand of this case, on the ground that against the objection of the appellants the board, in violation of its rules, admitted in evidence the record and evidence in another case without giving to the appellants an opportunity to reexamine or cross-examine the witnesses whose testimony was set out in the record so admitted.

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The motion is in effect nothing less than an attempt to appeal from a ruling of the board as to the admissibility of evidence, and rulings of that kind are not appealable inasmuch as this court is authorized to review final decisions of the board and not orders or rulings made during the hearing or trial and before a final decision is reached.—(Sec. 195, Judicial Code.)

The improper admission or consideration of evidence may be assigned as error and corrected on appeal from the final decision of the board. To review by direct appeal or motion intermediate rulings or orders which do not finally determine the issue submitted to the board would result in a multiplicity of appeals and proceedings and consequent unnecessary delays not contemplated or permitted by the statute.

The motion is therefore denied without prejudice to the consideration of the point on appeal from the final decision of the board. In view of the stipulation by counsel the record need not be printed in case the appeal is finally perfected.

(T. D. 38985)

Christmas-tree ornaments—Toys.

WOOLWORTH CO. *v.* UNITED STATES (No. 2102).

1. LEGISLATIVE SANCTION OF JUDICIAL CONSTRUCTION—TOYS.

The tariff act of 1913 having been enacted since the decision of the case of Illfelder *v.* United States (1 Ct. Cust. Appls., 109; T. D. 31115) with no provision to modify the definition of toys made in that case, Congress must be presumed to have sanctioned that definition.

2. CHRISTMAS-TREE ORNAMENTS ARE NOT TOYS.

Colored glass ornaments for Christmas trees are not toys under paragraph 342, tariff act of 1913. Their classification, some as colored glass articles under paragraph 84, and some as articles made of glass beads under paragraph 333, is not disturbed.

United States Court of Customs Appeals, January 13, 1922.

APPEAL from Board of United States General Appraisers, T. D. 38697 (G. A. 8427).

(Affirmed.]

Sharretts, Coe & Hillis for appellants.

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

[Oral argument October 27, 1921, by Mr. Hillis and Mr. Lawrence.]

Before DE VRIES, Presiding Judge, and SMITH, BARBER, and MARTIN, Associate Judges.

DE VRIES, Presiding Judge, delivered the opinion of the court:

These importations were of Christmas-tree ornaments, some of individual colored glass balls, with ring attached by which they could be suspended, some in the form of a number of colored glass

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globular or oval articles loosely strung together, and some of bead-like colored glass balls wired together in strings. The classifications for dutiable purposes by the collectors classifying the same were, in so far as herein concerned, in part under the provisions of paragraph 84 of the current tariff act as colored glass articles, and in part under paragraph 333 of said act as beaded articles. The importers protested several of these assessments claiming, in so far as here pertinent, the merchandise dutiable as "toys" under the provisions of paragraph 342 of said act. Other assessments, claims, and concessions are in the record but as here presented are not before the court for decision. The concrete issue here presented for decision is whether or not Christmas-tree ornaments, such as above described, are "toys" within the principles and decisions of import customs law. The stated paragraphs may be quoted, in so far as pertinent, as follows:

84. Glass bottles, decanters, and all articles *of every description* composed wholly or in chief value of glass, ornamented or decorated in any manner, or cut, * * * *colored*, stained, silvered, gilded, * * * or printed in any manner, * * * 45 per centum ad valorem: * * *. [Italics ours.]

333. * * * curtains, and other articles not embroidered nor appliquéd and not specially provided for in this section, composed wholly or in chief value of beads or spangles made of glass * * * 50 per centum ad valorem.

342. Dolls, and parts of dolls, doll heads, toy marbles of whatever materials composed, and all other toys, and parts of toys, not composed of china, porcelain, parian, bisque, earthen, or stone ware, and not specially provided for in this section, 35 per centum ad valorem.

The record is extended and quite complete and the case has been presented by counsel upon both sides with commendable industry. The Board of General Appraisers in a carefully written and elaborate opinion has reviewed the evidence with great care and precision.

What constitutes a "toy" within import tariff nomenclature was defined by this court in Illfelder *v.* United States (1 Ct. Cust. Appls., 109, 111; T. D. 31115), in the following language:

In common speech, and as popularly understood, a toy is essentially a plaything, something which is intended and designed for the amusement of children only, and which by its very nature and character is *reasonably* fitted for no other purpose. Although an article may be chiefly used for the amusement of children, if its nature and character are such that it is also reasonably fitted for the amusement of adults, or if it is reasonably capable of use for some practical purpose other than the amusement of children, it can not be classed as a toy unless it is affirmatively shown by the importer that it is so known and designated by the trade generally.

That definition was promulgated early in the history of this court, and in the numerous reviews of that pronouncement since made, in response to testimony offered and authorities submitted, the court has found no reason to deviate therefrom. Nor does this record offer such. Accepting that principle of decision, however, the importers here contend that within that doctrine it has been here shown that Christmas-tree ornaments are known and designated by the trade

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generally as "toys." The board, as stated, has carefully reviewed the testimony in the record upon that contention and stated its finding as follows:

From all these facts and authorities we find that the merchandise under consideration does not fall within the term "toy," either as defined by the courts or as known commercially to the trade of the country.

A careful review of that finding by this court not only fails to disclose any reason for disturbing it, but is convincing that it is well within the facts presented by the record and should not be disturbed.

The further contention is made by counsel for appellants, importers, that the legislative course indicates a purpose upon behalf of the Congress, approved by the courts, to treat and separately class and hold Christmas-tree ornaments as toys. The court is of the opinion that the contention is not sustained. It should be sufficient in this particular to point out that the case of Thanhauser *v.* United States (159 Fed., 228) and the Illfelder case, supra, negative this contention. After decision of the latter case, which construed paragraph 418 of the tariff act of 1897 providing for "toys," decided in 1910, the tariff act of 1913 was enacted without pertinent change affecting the construction therein placed upon the term. It can not be said, therefore, that any judicial or legislative interpretation exists contrary to the doctrine of the Illfelder case.

The decision of the Board of General Appraisers is *affirmed.*

(T. D. 38986.)

Christmas-tree ornaments—Toys.

CENTRAL WAREHOUSE CO. ET AL. *v.* UNITED STATES (NO. 2105).

CHRISTMAS-TREE ORNAMENTS ARE NOT TOYS.

Following Woolworth Co. *v.* United States (11 Ct. Cust. Appls., —; T. D. 38985), decided concurrently herewith, colored glass ornaments for Christmas trees are not toys under paragraph 342, tariff act of 1913. Their classification, some as glass articles under paragraph 84, and some as articles made of glass beads under paragraph 333, is not disturbed.

United States Court of Customs Appeals, January 13, 1922.

APPEAL from Board of United States General Appraisers, T. D. 38697 (G. A. 8427).

[Affirmed.]

Barnes, Chilvers & Halstead for appellants.

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

[Oral argument October 27, 1921, by Mr. Halstead and Mr. Lawrence.]

Before DE VRIES, Presiding Judge, and SMITH, BARBER, and MARTIN, Associate Judges.

DE VRIES, Presiding Judge, delivered the opinion of the Court:

The subject of decision herein is the same as that in Woolworth Co. *v.* United States (11 Ct. Cust. Appls., —; T. D. 38985), decided

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herewith. The case was submitted upon this and the record therein. For the reasons therein set forth the decision of the Board of General Appraisers is *affirmed*.

(T. D. 38987.)

Christmas-tree ornaments—Toys.

SHALLUS CO. *v.* UNITED STATES (NO. 2108).

CHRISTMAS-TREE ORNAMENTS ARE NOT TOYS.

Following Woolworth Co. *v.* United States (11 Ct. Cust. Appls., —; T. D. 38985) decided concurrently herewith, colored glass ornaments for Christmas trees are not toys under paragraph 342, tariff act of 1913. Their classification, some as glass articles under paragraph 84, and some as articles made of glass beads under paragraph 333, is not disturbed.

United States Court of Customs Appeals, January 13, 1922.

APPEAL from Board of United States General Appraisers, Abstract 44246.

[Affirmed.]

Comstock & Washburn (*J. Stuart Tompkins* of counsel) for appellant.

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

[Oral argument October 27, 1921, by Mr. Washburn and Mr. Lawrence.]

Before DE VRIES, Presiding Judge, and SMITH, BARBER, and MARTIN, Associate Judges.

DE VRIES, Presiding Judge, delivered the opinion of the court:

The subject of decision herein is the same as that in Woolworth Co. *v.* United States (11 Ct. Cust. Appls., —; T. D. 38985), decided herewith. The case was submitted upon this and the record therein. For the reasons therein set forth the decision of the Board of General Appraisers is *affirmed*.

(T. D. 38988.)

Clerical error.

WESTERN BAG CO. *v.* UNITED STATES (NO. 2095).

1. MANIFEST CLERICAL ERROR.

The market value of merchandise imported from Calcutta was officially determined as of the date when the vessel bearing it passed an Indian point known as Budge Budge. In the duplicate consular invoice received by the importer this date had originally been stated as May 2, but an attempt had been made to correct it to read May 1. In this attempt an imperfect erasure of the 2 was had and the 1, instead of being superimposed upon the 2, was placed in front of it, so that the date appeared as May 12. Importer, having made a pro forma entry, amended it, fixing the market value of the merchandise as of May 12, and delivered his consular invoice to the collector. The triplicate consular certificate of the invoice received officially at the customhouse stated this date as May 1. Duty was levied on the market value on May 1, and this, being higher than the entered value, the addi-

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tional duty provided for undervaluation by paragraph I, Section III, tariff act of 1913, was imposed. The clerical error made in stating the date was manifest from a comparison of the duplicate with the triplicate, both of which were in the hands of the collector as parts of the official record, and the additional duty should not have been imposed.

2. EVIDENCE.

Where the seller's declaration stated that the vessel left Calcutta on May 1, and the consular certificate stated that the vessel passed Budge Budge on May 12, the importer was justified in relying on the consular statement.

United States Court of Customs Appeals, January 13, 1922.

APPEAL from Board of United States General Appraisers, Abstract 44091.

[Modified.]

Frank L. Lawrence (*Martin T. Baldwin* and *Thomas M. Lane* of counsel) for appellant.

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence* and *Pelham St. George Bissell*, special attorneys, of counsel), for the United States.

[Oral argument October 28, 1921, by Mr. Lane and Mr. Charles D. Lawrence.]

Before DE VRIES, Presiding Judge, and SMITH, BARBER, and MARTIN, Associate Judges.

SMITH, Judge, delivered the opinion of the court:

Wheat bags shipped from Calcutta were on their arrival at Seattle, Wash., entered for duty by the importer at the value of 21 rupees 8 annas per 100 bags. The bags were officially appraised at 23 rupees per hundred, and because of their undervaluation in the entry an additional duty amounting to more than $3,000 was imposed upon the importation.

The importer protested against the assessment of additional duties on the merchandise and claimed in effect that as the entered value was the result of a manifest clerical error no additional duties should have been imposed.

The Board of General Appraisers overruled the protest and the importer appealed.

The material facts in the case are not disputed, and the only question raised by the appeal is whether the admitted facts warrant the conclusion that the "entered value" was caused by a manifest clerical error.

It appears from the record that on account of rapid fluctuations in the value of goods shipped from Calcutta it is the established customs practice to fix as the date of exportation the date on which the vessel carrying the goods passes a point known as Budge Budge, and that merchandise leaving Calcutta for the United States is officially appraised at its market value on that date.

The bags arrived in the United States before the coming to hand of the consular invoices, and as the importer was therefore without

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official information as to the date of exportation, he was in no position to safely make an entry. He consequently made application to the Secretary of the Treasury to enter the bags on a pro forma invoice at 21½ rupees per 100 bags, with permission to amend his entry to conform to the facts as shown by the consular invoices upon their arrival. The Secretary of the Treasury granted the application of the importer and the bags were thereupon entered on a pro forma invoice at the value of 21½ rupees per 100 bags. He was informed by the customs officials that the date on which the vessel carrying the goods passed Budge Budge would govern in determining the value of the importation.

After making the entry permitted by the Secretary of the Treasury the importer received his duplicate consular invoice and relying on the consular certificate thereto attached, which recited that the vessel had passed Budge Budge on May 12, 1919, he amended his entry and by the amendment fixed the entered value at 21½ rupees per 100 bags, their market value on May 12, 1919.

Five days after presenting the amended entry he was informed by the acting appraiser that the bags had been appraised at 23 rupees and upon inquiry learned that the consular certificate attached to the *triplicate* consular invoice received at the customhouse certified that the date on which the carrying vessel passed Budge Budge was May 1, and not May 12, as shown by the certificate to the duplicate. The duplicate copy was immediately submitted to the deputy collector of customs in charge of appraiser's stores on his request and filed as part of the customs records to release the bond given for its production at the time of making the pro forma invoice. (See par. E, Sec. III, act of 1913.)

The consular certificate on the triplicate invoice shows distinctly marks of erasure, but the day of the month is so incompletely erased as to leave a clear figure 1 and a scarcely distinguishable figure 2 in the date. It is evident that the original date was either May 1 or May 2, and if the latter, that the 1 was inserted before the 2 after that figure had been more or less effectively erased. The date of passing Budge Budge on the consular certificate to the duplicate invoice shows marks of having been once erased, but the figures 1 and 2 are quite plain, although the 1 is darker and therefore a bit more pronounced than the 2. So clear, however, are the figures 1 and 2 that the collector himself reported to the Secretary of the Treasury that the date "was originally stamped May 2 and changed to May 1, *leaving some doubt as to whether the correct date was May 1 or May 2*" (italics ours), from which it is apparent that both figures so clearly appear in the date that a reading of 12 was fully warranted, whereas a reading of either 1 or 2 had nothing to support it except surmise.

The Board of General Appraisers held in effect that the importer could have informed himself as to the true sailing date by reading the

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declaration of the seller made in Calcutta in which it was recited "that the market value on the sailing date 1–5–19, was as per broker's quotation Rs. 23." The date on which the vessel left Calcutta was probably May 1, but just why the importer was bound to accept that as the date on which the vessel passed Budge Budge is not apparent, especially as the American vice consul in the performance of his plain official duty made a certificate on the duplicate invoice which certified in terms that the vessel carrying the goods had passed Budge Budge on May 12. Had the importer relied on the seller's date as against the consular certificate and made his entry accordingly, it is perfectly evident that such an entry could not have been justified and that if incorrect the entry made on the faith of a date contradicted by the consular certificate left him wholly unprotected against the consequences of mistake.

All invoices must be made in triplicate and certified to by the proper consular officer of the United States. No importation of any merchandise exceeding $100 in value can be admitted to entry without the production of an invoice therefor certified to by such consular officer, and if an entry of the merchandise by a pro forma invoice is permitted a bond must be given for the production of the consular invoice certified to as required by law. (Pars. C, D, E, Sec. III, tariff act of 1913.)

Invoices of merchandise subject to appraisement on importation must be made out in triplicate, inasmuch as one copy is required for the consular office, one copy for the person requesting certification to be used in making entry of the merchandise and one copy for the collector of the port at which the merchandise is to be entered. (Secs. 2853, 2855, Rev. Stats., as amended by sec. 4, act of June 18, 1890; 21 Stats. L., 173.)

With that as the law it is evident that no official final entry of merchandise is possible without a certified consular invoice for such merchandise, and that in case such invoice is not at hand the importer can not be permitted to enter his merchandise on a pro forma invoice unless he gives a bond for the production of the certified invoice required by law. Therefore, the certified invoice received by the importer in this case was not only an official document, but it was a document essential to the making of a legal entry of his merchandise and one which he was bound to file with the collector at the time of such entry or in case the certified invoice was not available to produce it later on the obligation of his bond. The certified invoice was consequently not only a paper which the importer was required to present to the collector, but one which constituted a part of the official record of the importation in the customhouse.

For the statements in the invoice proper in this case the importer might well be held responsible, but he had no responsibility whatever

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for the certification as to the date on which the vessel carrying his goods passed Budge Budge. Under the customhouse practice that date had to be certified to by the consular officer, and he having certified mistakenly or otherwise that the vessel passed that point on May 12, 1919, the importer was warranted in accepting that date and making his entry accordingly. That the consular officer did make a mistake is demonstrated by the fact that the duplicate and triplicate certificates, both of them issued by the consul and both of them records of the customhouse, do not agree as to the day of the month which fixed the date of exportation. True, the error is not manifest from the duplicate, but it is manifest from the records in the case; that is to say, from a comparison of the duplicate with the triplicate. The importer was obliged to accept the date certified to in the consular certificate furnished to him, and if he had entered his merchandise on the faith of any other date, he could hardly have excused himself, if the date selected by him proved to be incorrect and to be a date on which the goods were lower in value than they were on the date certified.

The decision of the Board of General Appraisers in so far as it sustains the appraised value is *affirmed*, and in so far as it sustains the imposition of additional duties it is *reversed*.

(T. D. 38989.)

Shortage of dump-car wheels.

SMITH & CO. *v.* UNITED STATES (No. 2103).

APPRAISEMENT, FINALITY OF—ERROR WITHOUT INJURY.

360 car wheels were invoiced, entered, and appraised as 180 sets, $1,800. No appeal from the appraisement was taken and duty was had at the correct ad valorem rate upon the $1,800. Proof that a set of such wheels is 4 instead of 2 is of no avail, since the appraised value of $1,800 is, under paragraph M, Section III, tariff act of 1913, final and conclusive.

United States Court of Customs Appeals, January 13, 1922.

APPEAL from Board of United States General Appraisers, Abstract 44141.

[Affirmed.]

Appellants for themselves.

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

[Oral argument October 29, 1921, by Mr. Lawrence.]

Before DE VRIES, Presiding Judge, and SMITH, BARBER, and MARTIN, Associate Judges.

SMITH, Judge, delivered the opinion of the court:

Goods of foreign manufacture invoiced as 180 sets of dump-car wheels, imported at Spokane, Wash., were classified by the collector

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of customs at the port of Seattle as car wheels, 2 wheels to the set. and assessed for duty as manufactures of metal under that part of paragraph 167 of the tariff act of 1913 which reads as follows:

167. Articles or wares not specially provided for in this section; * * * if composed wholly or in chief value of iron, steel, * * * or other metal, * * * whether partly or wholly manufactured, 20 per centum ad valorem.

The importers protested that a set of dump-car wheels was composed of 4 wheels and not 2 wheels as found by the appraiser and the collector, and claimed that as only 90 sets of foreign-made wheels arrived instead of 180 sets as invoiced, the importation should have been certified as short shipped to the extent of 90 sets of wheels.

The Board of General Appraisers overruled the protest and the importers appealed.

At the time of entry an affidavit was made and delivered to the collector in which affidavit it was set forth that a set of railroad dump-car wheels consisted of 4 wheels. At the hearing by the board on the protest, the deputy collector of customs at Spokane testified on behalf of the importers that he inspected the shipment of dump-car wheels on their arrival from Canada and found them to be wheels such as are used on dump cars for railroad construction. He said that there were 720 wheels altogether, 360 of which were of foreign manufacture and 360 American goods returned. He further testified that 4 wheels were required for each car and that a set of car wheels consisted of 2 axles and 4 wheels. According to this witness there were 180 pairs or 90 sets of foreign wheels imported, and he therefore found a shortage in the importation. In his opinion the value of the shipment as stated in the invoice on the basis of 4 wheels to the set was conservative and consequently he passed the invoice value as correct.

The collector of customs at Seattle, Wash., liquidated the entry of foreign wheels on the basis of 2 wheels to the set and fixed the duty at 20 per cent of $1,800, the appraised value thereof.

We think that the evidence of the deputy collector at Spokane submitted by the importers and admitted without objection established that 4 wheels constituted a set of dump-car wheels, from which it follows that only half the number of sets invoiced actually arrived. It appears on the face of the entry, however, that the wheels were appraised by the appraiser at *$10 per set on the basis of 2 wheels to the set* instead of $10 for 4 wheels, as claimed by the importers. While the collector therefore assessed duty on twice the number of sets actually imported, the amount of duty collected was no more than the Government was entitled to receive, inasmuch as 2 wheels were finally appraised at double their invoice value. Wrong though the collector and the appraiser may have been in holding that 2 wheels not 4 constituted a set, the fact remains that the wheels

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imported and subject to duty were officially appraised at $1,800, and that on that sum the collector took duty at the rate prescribed by law.

The papers in the case establish beyond question that each 2 wheels of the 360 foreign wheels imported was appraised at $10. That value may have been twice as much as the real market value of the wheels, but no appeal having been taken to reappraisement, the appraiser's finding as to value must stand because of the express command of the statute—

> The decision of the appraiser, or the person acting as such (in case where no objection is made thereto, either by the collector or by the importer, owner, consignee, or agent), or the single general appraiser in case of no appeal, or of the board of three general appraisers, in all reappraisement cases, shall be final and conclusive against all parties and shall not be subject to review in any manner for any cause in any tribunal or court, * * *. (Par. M, Sec. III, tariff act of 1913.)

The decision of the Board of General Appraisers is therefore *affirmed.*

(T. D. 38990.)

War tax on spirits—Revenue act of 1918.

SHAW & CO. ET AL. *v.* UNITED STATES (No. 2115).

INTERNAL REVENUE—CUSTOMS.

The provision of section 600 (*a*), revenue act of 1918 (40 Stats. L., 1057), levying additional taxes on certain imported distilled spirits describes a customs duty and not an internal-revenue tax. Such spirits, imported and warehoused in 1917 and 1920 but withdrawn for consumption after the revenue act went into effect, were subject to the duty imposed by paragraph 237, tariff act of 1913, and also to that imposed by the revenue act.

United States Court of Customs Appeals, January 13, 1922.

APPEAL from Board of United States General Appraisers, G. A. 8435 (T. D. 38719).

[Affirmed.]

W. P. Preble for appellants.

William W. Hoppin, Assistant Attorney General (*John J. Mulvaney*, special attorney, of counsel), for the United States.

[Oral argument October 25, 1921, by Mr. Preble and Mr. Mulvaney.]

Before DE VRIES, Presiding Judge, and SMITH, BARBER, and MARTIN, Associate Judges.

SMITH, Judge, delivered the opinion of the court:

9,816.06 gallons of whiskey, brandy, and other liquors imported and warehoused in 1917 and 5,173.24 gallons imported and warehoused in 1920 were withdrawn for consumption subsequent to February, 1919; 6,600.36 gallons of the 1917 importations withdrawn in March, April, May, and June, 1919, for beverage purposes,

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were assessed with a duty of $2.60 per gallon under paragraph 237 of the tariff act of 1913 and with an additional duty of $6.40 under section 600 of the act of February 24, 1919.

2,209.72 gallons of the 1917 importations, it is claimed by the importers (protest 937180), were withdrawn for nonbeverage purposes in 1920 and paid a duty of $2.60 per gallon under paragraph 237 of the tariff act of 1913 and an additional tax of $1.10 per proof gallon levied thereon under the war act of February 24, 1919. This claim, however, is not sustained by the report of the collector, from which it appears that before the passage of the war revenue act of 1919 he liquidated the entries under the act of 1917 at $2.60 per gallon, plus $2.10, not $1.10 per gallon, from which it would seem that the collector assumed that the liquors were to be withdrawn for beverage purposes.

The report of the collector further establishes that the goods were not actually released from customs custody until after the revenue act of February 24, 1919, became effective, and that on reliquidation the rates prescribed by paragraph 600 of the act of 1919 were substituted for the rate of $2.10 per gallon assessed on the original liquidation under the act of October 3, 1917.

1,006.28 gallons, the rest of the 1917 importations, and the 5,173.24 gallons, imported in 1920, withdrawn for nonbeverage purposes in 1920, were assessed for duty at $2.60 per gallon under the provisions of paragraph 237 of the tariff act of October, 1913, and with an additional duty of $2.20 per gallon under the provisions of section 600 of the revenue act approved February 24, 1919.

It is stipulated between the Government and the importers that on 6,302.04 gallons of the whiskies imported in 1917 and withdrawn for beverage purposes after the passage of the war revenue act of 1919 there was refunded to the importers $4.30 per gallon. Just how that amount per gallon was reached does not appear from the record or the stipulation. If the importers paid $2.60 under the act of 1913 and $2.10 under the act of 1917 and subsequently paid $6.40 under the act of 1919, they *apparently* would be entitled to a refund of $2.10 per gallon. On the other hand, if they paid $2.60 under the act of 1913 and $2.10 under the act of 1917 and subsequently paid $2.60 under the act of 1913 and $6.40 under the act of 1919, they would *apparently* be entitled to a refund of $4.70. As there is nothing, however, either in the record or the stipulation which establishes that they paid $4.70 under the acts of 1913 and 1917, and subsequently $2.60 and $6.40 under the acts of 1913 and 1919, we are unable to reach any conclusion as to what the refund should have been, and therefore we do not deal with that question or with the sufficiency of the protests on that point.

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The importers protested, first, that the distilled spirits imported and withdrawn for beverage purposes were not subject to the additional tax of $6.40 per gallon provided for in section 600 of the revenue act approved February 24, 1919; second, that the distilled spirits imported and withdrawn for nonbeverage purposes were not subject to the additional tax of $2.20 imposed by said section 600; third, that the revenue act approved February 24, 1919, repealed section 300 of the act of October 3, 1917, and imposed an internal revenue and not a duty tax on distilled spirits, with the result that such spirits are subject to no duty other than the $2.60 per gallon provided for in paragraph 237 of the act of October 3, 1913.

The Board of General Appraisers overruled the protests and the importers appealed.

Leaving out of consideration the matter of the refund, concisely stated, the contention of the importers is that there is no duty imposed on imported distilled spirits other than that prescribed by paragraph 237 of the act of October 3, 1913, admitted to be still in force, and that therefore the liquors withdrawn from warehouse should have been subjected to a duty of $2.60 per gallon and no more.

The position of the Government is that all distilled spirits are subject not only to the duty of $2.60 per gallon provided for in paragraph 237 of the act of 1913, but to the additional duties prescribed by the act of February 24, 1919; that is to say, $2.20 per gallon on spirits withdrawn for nonbeverage purposes and $6.40 on spirits withdrawn for use as beverages.

Section 600 of the act approved February 24, 1919, levies a tax, first, on all distilled spirits in bond; second, on all distilled spirits produced in the United States, and third, on all distilled spirits imported into the United States.

Taxes levied on domestic spirits, whether in bond or not, are beyond question excise or internal revenue taxes, and taxes levied on distilled spirits imported into the country and still in customs custody are just as certainly imposts on imports and therefore customs duties. The designation of a tax on domestic products or industries as a customs duty would be an inexcusable misnomer, and it is no less a misnomer to call a levy on imports in customs custody an internal revenue tax. True enough, excises and duties are both in a sense indirect taxes; nevertheless, they are so essentially different that neither can be converted into the other or into anything else by simply giving it another name. If it were otherwise the constitutional provisions which reserve to Congress the right to regulate commerce among the several States and which inhibit the States from laying imposts or duties on imports or exports without the consent of Congress might be avoided and defeated by the simple process of dubbing such taxes

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license fees or stamp taxes, as was attempted by the State of Maryland in 1821, by California in the "fifties," and by the State of Tennessee in 1881.—Brown *v.* Maryland (12 Wheat., 419); Almy *v.* California (24 How., 169–173); Robbins *v.* Shelby County (120 U. S., 489).

Moreover, the limitation on the power of Congress to lay a tax or duty on articles exported from any State might be readily evaded by the adroit expedient of imposing a stamp tax on bills of lading or by levying on such articles a so-called internal revenue tax. The National Government can not impose any tax burden on exports of the States, and the States on the other hand can not subject either imports or exports to any impost, whatever may be the name or guise it takes. In other words, the name of a tax does not determine its nature.—May *v.* New Orleans (178 U. S., 496–507); Fairbank *v.* United States (181 U. S., 283–290–291).

Whatever, therefore, may have been the "excise" or "internal revenue" taxes levied by the act approved February 24, 1919, the taxes laid by it on imports in customs custody were essentially "customs duties" determinable and collectible as prescribed by law.—United States *v.* Shallus (9 Ct. Cust. Appls., 168; T. D. 37999); Porges & Levy *v.* United States (10 Ct. Cust. Appls., 244; T. D. 38575); Batjer & Co. et al. *v.* United States (11 Ct. Cust. Appls., —; T. D. 38726).

As it is admitted that paragraph 237 of the act of 1913 is still in force, and as all taxes imposed on imports in customs custody by section 600 of the revenue act approved February 24, 1919, are customs duties, it follows that all of the spirits here involved were subject to a duty of $2.60 per gallon and to an additional duty either of $2.20 per gallon if withdrawn for nonbeverage purposes subsequent to February 24, 1919, or of $6.40 per gallon if withdrawn for beverage uses after that date. (Par. 237, tariff act 1913; sec. 600, revenue act approved Feb. 24, 1919.)

The decision of the Board of General Appraisers must therefore be *affirmed.*

(T. D. 38991.)

American goods returned.

UNITED STATES *v.* BIRD (No. 2106).

1. AMERICAN GOODS RETURNED—PROOF OF IDENTITY—STIPULATION.

A stipulation between counsel for the parties as to goods claiming free entry under paragraph 404, tariff act of 1913, as American goods returned, that "the parts claimed to be of American manufacture are American goods actually exported," establishes their identity.

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2. ADVANCED IN VALUE OR IMPROVED IN CONDITION—EVIDENCE—JUDICIAL NOTICE. American-made parts had been incorporated abroad in electric generators. The court, in the trial of a protest claiming free entry of such parts under paragraph 404, tariff act of 1913, can not judicially know that they have not been "advanced in value or improved in condition by any process of manufacture or other means." In fact, it *seems* that they have. The decision of the Board of United States General Appraisers sustaining a protest against their assessment under paragraph 167 is reversed.

United States Court of Customs Appeals, January 13, 1922.

APPEAL from Board of United States General Appraisers, Abstract 44210.

[Reversed.]

William W. Hoppin, Assistant Attorney General (*John J. Mulvaney*, special attorney, of counsel), for the United States.

Barnes, Chilvers & Halstead for appellee.

[Oral argument October 26, 1921, by Mr. Mulvaney and Mr. Halstead.]

Before DE VRIES, Presiding Judge, and SMITH, BARBER, and MARTIN, Associate Judges.

BARBER, Judge, delivered the opinion of the court:

Paragraph 404 of the tariff act of 1913 provides for the duty-free importation into this country of certain merchandise previously exported, in the following language:

> Articles the growth, produce, or manufacture of the United States, when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means; * * * but proof of the identity of such articles shall be made, under general regulations to be prescribed by the Secretary of the Treasury.

There are two entries and two protests in this case.

As appears by one invoice and consumption entry there was imported from Canada about October 3, 1918, one electric furnace, complete, consisting of motor generator set and six furnaces, and about the 22d day of the same month, as appears by the other invoice and entry papers, there was another importation from Canada of one electric generator complete, with field rheostats, coupling, and pedestal.

We understand each importation, and it is so treated by counsel, to be properly designated as an electric generator, and each was assessed by the collector under paragraph 167 of the act. As an integral part of each machine there were certain articles called "generator spiders, generator shafts, pole pieces, and pole splines." It is claimed that these articles were made in the United States and exported to Canada, there used in the manufacture of these generators, and that upon the importation of the generators such parts were entitled to free entry as American goods returned under paragraph 404, and that is the only issue.

When the case came on for hearing before the Board of General Appraisers it was stipulated between counsel for the respective parties

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"That the parts claimed to be of American manufacture are American goods actually exported, but they are so incorporated in the electric generators that their identity could not be established by physical examination."

No testimony was offered by either party, nor, so far as the record discloses, did counsel make any statement before the board as to their respective claims touching the classification of the merchandise. The material part of the protest was that the merchandise was entitled to entry free of duty under the provisions of paragraph 404. The collector in his return to the board stated that he had assessed the merchandise under paragraph 167, and that it had been returned by the appraiser as impossible to segregate the alleged United States manufactures. The appraiser's answer to the protest was to the effect that the importations were found to be complete electric generators, and that if any material of American origin was employed in the manufacture thereof its identity was lost and that it could not be segregated for classification purposes.

Thereupon the Board of General Appraisers found that the regulations of the Secretary of the Treasury for the administration of the law under paragraph 404 had been complied with; that by the stipulation the identity of the goods had been established; and sustained the claim of the importer that as to the parts above mentioned they were entitled to entry free of duty.

The Government in its brief on the argument of this appeal claims—

(*a*) That the importations were entireties and the parts thereof were not separable for tariff purposes.

(*b*) That if the machine parts above referred to were exported from the United States they were returned advanced in value and improved in condition.

(*c*) That the identity of the articles has not been established before either the collector or the board.

Importer urges that the stipulation establishes the identity of the parts that are claimed to be of American origin sufficiently for the purposes of this case, and we concur in that view.

The Government, however, as already appears, claims that these parts were returned advanced in value and improved in condition. It is true the Board of General Appraisers made no specific finding upon that phase of the case, but in order to sustain the protest it must have found or assumed that these machine parts had not been advanced in value or improved in condition, to use the language of the statute, "by any process of manufacture or other means."

This implied finding is specifically challenged by the Government in its assignment of errors.

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Under paragraph 404 it is incumbent upon the importer to establish that these machine parts when returned had not been advanced in value or improved in condition, or, what would be the equivalent, that the value was no greater and the condition no better than when exported from the United States.

While proof of *identity* may be made under general regulations to be prescribed by the Secretary of the Treasury (or agreed to as by the stipulation in this case), proof of value or condition, unless waived, must be made in the same manner as any other fact which an importer is called upon to establish by substantive evidence. There is nothing here to show the cost of installing these various machine parts in the respective generators, or whether after being installed they were of no greater value and in no better condition than when exported from the United States. It would seem reasonable to presume, at least until the contrary were shown, that their incorporation in these generators advanced their value or improved their condition, or both. As pointed out by the Government, when exported they were so many pieces of metal, probably useless for any purpose other than that for which they were designed, while as imported they were in position to serve that purpose. They were working parts of a complete machine, and their installation so that they could perform their predesigned function would seem to constitute an improvement in their condition, as well as an advance in their value. The burden, however, was on the importer to show that there had been neither an advance in the value nor an improvement in the condition of these parts by any process of manufacture or other means.

We think the importer has failed to discharge this burden.

The only thing that relates to this phase of the case is an ex parte affidavit contained in the entry papers that the goods were the production or manufacture of the United States and were returned without having been advanced in value or improved in condition. This affidavit, however, was obviously made in support of the claim for a "conditionally free entry," as that term is employed in Chapter VII of the Customs Regulations of 1915. It could not, if challenged, be conclusive of the facts alleged, and the collector's denial of free entry puts them in issue. The stipulation has established that the parts claimed to be of American manufacture are such and identifies them for the purposes of this case, but it shows nothing as to their value or condition.

In this view of the case it becomes unnecessary to determine any other of the questions argued.

We think the board, upon the record before it, should have sustained the assessment of the collector.

The judgment of the Board of General Appraisers is therefore *reversed.*

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(T. D. 38992.)

Works of art—Parts of altar.

REARDON *v.* UNITED STATES (No. 2063).

1. SCULPTURES—STATUARY.

The provision of paragraph 652, tariff act of 1913, for "original sculptures or statuary" means representations of natural objects. A set of church altars (one main and two side) of the conventional Gothic type is not embraced within it.

2. ARTICLES OF UTILITY—CHURCH ALTARS.

The provision of paragraph 652, tariff act of 1913, excluding articles of utility from the operation of the paragraph excludes church altars, since they are articles of utility.

3. "WORKS OF ART."

The provision of paragraphs 376, 654, and 655, tariff act of 1913, for "works of art" refers to the *free* rather than the *dependent* fine arts; and church altars are not within the expression.

4. CHURCH ALTARS—MANUFACTURES OF MARBLE.

A set of marble church altars (two side and one main) of the conventional Gothic type, imported in a knock-down condition, is not admissible free of duty as "sculpture or statuary" under paragraph 652, tariff act of 1913, or as "works of art" under paragraph 654 or 655, or dutiable as "works of art" under paragraph 376, but dutiable as manufactures of marble under paragraph 98.

United States Court of Customs Appeals, January 13, 1922.

APPEAL from Board of United States General Appraisers, G. A. 8360 (T. D. 38465).

[Affirmed.]

Frank L. Lawrence (*J. Wiseman MacDonald*, *William P. Boland*, and *Thomas M. Lane* of counsel) for appellant.

William W. Hoppin, Assistant Attorney General (*John J. Mulvaney*, special attorney, of counsel), for the United States.

[Oral argument October 28, 1921, by Mr. Lane and Mr. Hoppin.]

Before DE VRIES, Presiding Judge, and SMITH, BARBER, and MARTIN, Associate Judges.

MARTIN, Judge, delivered the opinion of the court:

The issue in this case relates to the tariff status of certain marbles which were imported from Italy for the construction of an altar in a Catholic church in this country.

The appellant is Father Reardon, who at the time now in question was pastor of St. Anthony's church located at Long Beach, Calif. In the year 1913 the appellant and his congregation commenced the building of a church edifice for the parish, their purpose of course contemplating also the erection of an altar therein. It was desired that this should be as beautiful and imposing as possible, and since the congregation was not wealthy the pastor sought for special donations toward the cost of the altar before deciding upon its design and expense. He succeeded in obtaining a pledge from one parish-

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ioner of $6,000, from another $2,000, and $2,000 from a third. It may be said in passing that the donors never fully paid the sums so promised by them, but at the time of the pledge they fully intended to do so, and it was contemplated that the amount thereof would be sufficient to procure an acceptable main altar and two side altars for the new church. The pastor thereupon procured designs from various establishments which were engaged in the business of constructing church altars in this country. The designs were drawn in accordance with certain suggestions and directions which the pastor himself furnished, and finally a design submitted by the E. Hackner Co., of La Crosse, Wis., was accepted, after it had been somewhat altered to suit the pastor's wishes. A written contract was thereupon entered into between St. Anthony's congregation and the company whereby the latter agreed to furnish for the congregation a main altar and two side altars according to the accepted design, to be composed of Italian carrara white marble, the main altar to be 15 by 26 feet, including a three-step platform, the side altars to be 6 feet 6 inches by 16 feet, including one step for each platform, no statuary however to be included, and all to be set up by competent men and marble setters in the new church building. The price of the altars in full was to be $10,000 payable in stipulated installments, and it was a term of the contract that they were to be "imported free of duty."

In the performance of this contract the E. Hackner Co. ordered the marble pieces which composed the present importations. They came from Martino Barsanti of Pietrasanta, Italy, and were invoiced to "Rev. J. A. Reardon, of Long Beach (Calif.) through the E. Hackner Co., of La Crosse (Wis.)." Altogether there were 71 boxes of marble containing many hundreds of separate pieces, all fitted and prepared to enter into the construction of the three altars according to the terms of the existing contract. It may be noted that certain slight alterations in dimensions were found necessary when the altars came to be erected, but that fact bears no relation to the present issue.

The importation was entered by Father Reardon at the port of Los Angeles; the entry was made upon the invoice above mentioned with a claim that the merchandise should be admitted free, upon the ground that it was imported expressly for presentation to the above-named church. Certain certificates in support of this claim were filed concurrently with the entry, and subsequently others were filed for the same purpose.

The collector, however, denied the claim for free entry and assessed duty at the rate of 45 per cent ad valorem, under the provision for articles manufactured of marble in paragraph 98 of the tariff act of 1913.

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Thereupon a protest was filed by Father Reardon, claiming free entry for the merchandise under paragraphs 652, 654, and 655, severally, or alternatively an assessment thereon of only 15 per cent ad valorem under paragraph 376 of the act. Copies of these paragraphs appear immediately below.

The protest was submitted upon evidence to the Board of General Appraisers, who overruled it, from which decision the protestant now appeals.

The following is a copy of the relevant parts of paragraph 98 under which the merchandise was assessed, and also per contra of paragraphs 652, 654, and 655 of the free list, and paragraph 376 of the dutiable list, upon which the various claims of the protest were founded:

98. Marble * * * wholly or partly manufactured into monuments, benches, vases, and other articles, * * * 45 per centum ad valorem.

376. Works of art, including paintings in oil or water colors, pastels, pen and ink drawings, or copies, replicas, or reproductions of any of the same, statuary, sculptures, or copies, replicas or reproductions thereof, and etchings and engravings, not specially provided for in this section, 15 per centum ad valorem.

(Free list.)

652. * * * original sculptures or statuary * * * ; but the terms "sculpture" and "statuary" as used in this paragraph shall be understood to include professional productions of sculptors only, whether in round or in relief, * * * or whether cut, carved, or otherwise wrought by hand from the solid block or mass of marble, * * * made as the professional productions of sculptors only; and the words * * * "sculpture" and "statuary" as used in this paragraph shall not be understood to include any articles of utility, nor such as are made wholly or in part by * * * any other mechanical process; * * *.

654. Works of art * * * imported in good faith for exhibition at a fixed place by any State or by any society or institution established for the encouragement of the arts, science, agriculture, or education * * * but bond shall be given under such rules and regulations as the Secretary of the Treasury may prescribe for the payment of lawful duties which may accrue should any of the articles aforesaid be sold, transferred, or used contrary to this provision * * *.

655. Works of art, * * * imported expressly for presentation to an incorporated religious society * * * but such exemption shall be subject to such regulations as the Secretary of the Treasury may prescribe.

It thus appears that the merchandise was assessed with duty at the rate of 45 per cent ad valorem as manufactures of marble under paragraph 98; whereas appellant claims free entry for it as original sculptures or statuary under paragraph 652, or as works of art imported for institutions established for the encouragement of education under paragraph 654, or as works of art imported expressly for presentation to a religious society under paragraph 655; and in case of an adverse ruling on these claims appellant contends for an assessment of only 15 per cent ad valorem upon the merchandise as works of art under paragraph 376.

As above stated, the present importations comprise many hundreds of separate pieces, all of them elaborated and prepared to serve as

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parts in the erection of the contemplated altars. It will be observed, however, that both the collector and the importer have treated the importations as entireties without attempting to distinguish between the separate marbles composing them. Accordingly, in the invoice and entry the merchandise was described as a main altar and two side altars, while in the protest they were described simply as church altars. It is apparently conceded that the importations contain substantially all of the marble parts required for setting up the proposed altars, although the contract refers also to other materials and brickwork, masonry work, etc., which necessarily would have to be supplied in this country. The question in hand accordingly deals with the altars as entireties, and it becomes necessary, therefore, to inquire how far these may answer to the various tariff enumerations upon which the protest is founded.

The first claim presented by the protest is that the altars respond to the description of "original sculptures or statuary" within paragraph 652, wherein it is prescribed that those terms shall be understood to include professional productions of sculptors only, whether in round or in relief, or whether cut, carved, or otherwise wrought by hand from the solid block or mass of marble, made as the professional productions of sculptors only, and not to include any articles of utility nor such as are made wholly or in part by any mechanical process.

The Standard Dictionary (1916) defines statuary to be statues, collectively considered; statues are defined by the same authority as plastic work representing a human or animal figure, generally in marble or bronze; especially, such a work, nearly life-size or larger, as distinguished from *statuette*, and preserving the proportions in all directions as distinguished from *relief*. The same dictionary primarily defines sculpture as the art of fashioning figures out of stone or other solid material by carving or chiseling, or of modeling them in some plastic substance, for subsequent reproduction by carving or by casting as in bronze. It is said, furthermore, to be that free branch of the fine arts that imitates natural objects, chiefly the human body, by representing in solid form their true proportions, either in all three dimensions or in those of length and breadth only. It is either (1) *sculpture proper*, where the proportions of all three dimensions are reproduced, or *relief*, where that of thickness or depth is relatively reduced.

The foregoing definitions have been adopted with approval by this court in former decisions (see United States *v.* Olivotti & Co., 7 Ct. Cust. Appls., 46; T. D. 36309, and cases cited), and a mere reference to them seems to be a sufficient answer to the claim that the altars are either sculptures or statuary. A photograph of the main altar and a print of the two side altars are in evidence in the case. From them it appears that the altars conform to the conventional type of

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gothic church altars, with a table surmounted by spires and crosses, with panels, tabernacles and columns, and decorated with scroll and tracery work and other similar ornamentation. There are also steps of ordinary construction leading up to the altar platform. No imitations or representations of natural objects or human or animal forms are carved upon the altars, with the single exception of a lamb, upon the front of the altar table. As entireties they are not imitations of any distinctive object at all, but are quasi architectural edifices. Nor are they "in round or relief," nor "cut, carved, or otherwise wrought by hand from the solid block or mass of marble," nor can it properly be said that altars so designed, ordered, and constructed are the "original" and "professional productions of sculptors only." It is claimed that Martino Barsanti is a professional sculptor, but it must be remembered that the design for these altars was worked out by Father Reardon and the members of the constructing company, none of whom, so far as we know, claims to be a professional sculptor. It is not improper, furthermore, to note that the written contract itself expressly stipulates that no statuary is included therein.

Moreover, we think that the altars are excluded from the operation of paragraph 652, because of the proviso that the words "sculpture" and "statuary" as used therein "shall not be understood to include any articles of utility." It is of course well known that the altars of a Catholic church serve an all-important use and function in the religious observances held therein. They are essential parts of the church equipment, and accordingly they possess the quality of utility. In fact that quality gives the present articles almost their sole value, since they would be little more than waste stones if removed from their position of service in the church. Nor are they any the less useful as altars because of their cost and their beautiful and artistic adornment, for they serve their religious uses none the less effectively on that account. In that particular they differ in character from the article which was involved in United States *v.* Baumgarten & Co. (2 Ct. Cust. Appls., 321; T. D. 32052). The vase in question in that case served as a mere foundation for the creative work which was imposed upon it by the artist; and it no longer possessed any real utility for the ordinary and practical purposes of a vase. This statement applies similarly to the painted fans involved in Tiffany *v.* United States (66 Fed., 736), and to the paintings upon wood, as imported, in White *v.* United States (113 Fed., 855).

We conclude therefore that the altars were not entitled to free entry as sculptures or statuary under paragraph 652.

The protest next includes a claim for free entry of the merchandise under paragraph 654 as works of art imported in good faith for exhibition by an institution established for the encouragement of

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education; also a claim for its free entry under paragraph 655 as works of art imported expressly for presentation to an incorporated religious society; together with an alternative claim for its assessment at the rate of 15 per cent ad valorem under paragraph 376, in event the foregoing claims for free entry should be overruled by the court.

It will at once be noticed that the importations can not be classified under any of the three paragraphs last cited, unless first they be held to be "works of art" within the purview thereof. The question therefore arises whether the altars answer to the legislative description of works of art within the paragraphs thus cited.

It may be difficult to formulate an exact definition, at the same time comprehensive and exclusive, of the term "works of art." In a reported case, T. D. 18625 (G. A. 4023), a witness is quoted as saying: "It is difficult to define a work of art, or say just where a work of art begins and where it ends. In a large sense, everything from the commonest design on a cheap cast-iron stove to the frieze of the Parthenon can be included in the expression 'work of art.' There is no established line. Every man draws his own line." On the other hand, the Standard Dictionary (1916) says:

> The fine arts may be classed in general as (1) the *free*, whose object is to create form for its own sake, embracing painting, engraving, sculpture, music and poetry; and (2) the *dependent*, whose object is to create form that shall minister to some utility, embracing architecture, landscape gardening, decoration, ceramics, glass making, the goldsmith's art, and other applications of the principle of artistic construction and arrangement.

We think that for tariff purposes the definition of the free fine arts above quoted comes nearest to the intent with which Congress employed the phrase in question. And that view was expressed by this court by Judge Smith in United States *v.* Olivotti & Co. (7 Ct. Cust. Appls., 46, 48; T. D. 36309), as follows:

> Finding, as we do, that the font is not sculpture, the next question which arises is, Can it, because of its beauty and artistic character, be classified as a work of art within the meaning of paragraph 376? We think not. In our opinion, the expression "works of art" as used in 376 was not designed by Congress to cover the whole range of the beautiful and artistic, but only those productions of the artists which are something more than ornamental or decorative and which may be properly ranked as examples of the free fine arts, or possibly that class only of the fine arts imitative of natural objects as the artist sees them, and appealing to the emotions through the eye alone. The potter, the glassmaker, the goldsmith, the weaver, the needlewoman, the lacemaker, the woodworker, the jeweler, all produce things which are both artistic and beautiful. It can hardly be seriously contended, however, that it is the legislative purpose to include such things, beautiful and artistic though they may be, in a provision which, as shown by its history and the enumerations therein contained, was intended to favor that particular kind of art of which painting and sculpture are the types. See Lazarus *v.* United States (2 Ct. Cust. Appls., 508, 509; T. D. 32347); United States *v.* Downing (6 Ct. Cust. Appls., 545; T. D. 36197).

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That everything artistic and beautiful can not be classed as fine arts was well established in United States *v.* Perry, which involved the classification of painted glass windows on which were represented by artists of superior merit pictures of the saints and other biblical subjects. In that case it was held by the Supreme Court that the windows were not paintings and that, although they were artistic in the sense that they were beautiful, they were representative of the decorative and industrial rather than of the fine arts.—United States *v.* Perry (146 U. S.. 71, 74).

The foregoing observations apply directly to the altars now in question. It is true that they were artistically designed and constructed, but their adornment belonged to the decorative and industrial rather than the fine arts. They are essentially the product of builders and ornamentalists rather than artists, for, after all, they are structures of church equipment for use in religious worship and are not esthetic objects created or produced by artists to appeal to the emotions through the eye alone. Such objects are not "works of art" within the sense of the statute. In reaching this conclusion we have not overlooked the testimony of the witnesses Stone and Anker, nor the statement of the exporter, but we consider the character of the merchandise to be obvious.

In the board's decision various questions were passed upon in addition to those just considered. One of these related to certain testimony which had been taken in a reappraisement proceeding affecting the same importation. The Government sought to introduce the record of this testimony in the present case, but the board refused to admit it. Furthermore under paragraph 654 the board held that the church in question was not an institution "established for the encouragement of * * * education," and that the altars had not been imported for "exhibition" therein, within the intent of the paragraph; the board also found that the bond required by the paragraph had not been given by the importer. And under paragraph 655 the board found upon the testimony that the altars had not been "imported for presentation to * * * an incorporated religious society." It was not denied that the church was such a society within the sense of the statute, but it was held that the actual importation of the merchandise was effected by the E. Hackner Co. for the purpose of performing its contract. The board held also that the regulations established by the department under the latter paragraph had not been complied with by the importer. We do not disagree with the board in respect to any of these conclusions, but we have not discussed them in detail since we find the merchandise to be foreign to the primary classifications relied upon in the protest.

It must be conceded that our conclusion in this case is inconsistent with several former decisions of other courts, notably Morris European & American Express Co. *v.* United States (85 Fed., 964), and United States *v.* Ecclesiastical Art Works (139 Fed., 798, affirmed

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142 Fed., 1038), and other authorities cited in the appellant's brief. But we believe that it is sustained by United States *v.* Halle (6 Ct. Cust. Appls., 543; T. D. 36196); United States *v.* Downing (6 id., 545; T. D. 36197); United States *v.* Olivotti (7 id., 46; T. D. 36309), and United States *v.* Perry (146 U. S., 71).

In accordance with the views above presented the decision of the board is *affirmed.*

(T. D. 38993.)

Special agency districts.

Changing boundary lines and creating new district.

TREASURY DEPARTMENT, *January 30, 1922.*

To Special Agents and Others Concerned:

The following changes are hereby made in special agency districts Nos. 6, 8, and 10 for the purpose of creating a new special agency district with headquarters at New Orleans, La., which will be known as special agency district No. 7.

The sixth special agency district is hereby modified by the separation therefrom of the States of Alabama, Mississippi and Louisiana; the eighth special agency district is reduced by the separation therefrom of customs collection districts Nos. 21 and 22, and the tenth special agency district by the separation therefrom of the State of Arkansas.

The territory above separated from the several special agency districts mentioned is hereby constituted seventh special agency district.

This change will be effective March 1, 1922.

(100000-50.) ELMER DOVER, *Assistant Secretary.*

(T. D. 38994—G. A. 8498.)

Automobile body frames.

Automobile body frames composed in chief value of wood, imported unlined and untrimmed, with no exposed hardware, and without floor boards, toe boards, instrument boards, windshield brackets, top irons or brackets, and otherwise lacking necessary parts which ordinarily enter into and go to make up complete automobile bodies, and which are not definitely, uniformly, and generally known and recognized throughout the trade and commerce of this country as automobile bodies, are properly dutiable at the rate of 15 per cent ad valorem under paragraph 176, tariff act of 1913, as articles composed in chief value of wood, rather than at the rate of 45 per cent ad valorem under paragraph 119 of said act as automobile bodies. G. A. 8369 (T. D. 38480) cited and followed.

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United States General Appraisers, New York, January 20, 1922.

In the matter of protests 933509, etc., of John V. Carr against the assessment of duty by the collector of customs at the port of Detroit.

[Reversed.]

Comstock & Washburn (*J. Stuart Tompkins* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Harry M. Farrell*, *Charles D. Lawrence*, and *Frank P. Wilson*, special attorneys), for the United States.

Before Board 2 (FISCHER, HOWELL, and WELLER, General Appraisers).

FISCHER, General Appraiser: The merchandise in question is entered and described on pro forma invoices as "auto body less metal parts." It was advisorily classified by the local appraiser as "unfinished automobile body," and duty was levied thereon at the rate of 45 per cent ad valorem under the specific provision in paragraph 119 of the act of 1913 for "automobile bodies." It is claimed by the importer, among other things, that said articles are properly dutiable at the rate of 15 per cent ad valorem under paragraph 176 of said act as manufactures composed in chief value of wood.

Inasmuch as it is mutually conceded that wood is the most valuable component in said articles, the sole question here presented for determination is whether the articles as imported are in fact automobile bodies, as classified by the collector.

The record establishes as facts that the merchandise covered by protests 933509 and 933620 in its imported condition, is unlined and untrimmed, has no exposed hardware, floor boards, toe boards, instrument boards, windshield brackets, top irons or brackets, and is otherwise minus necessary parts which enter into and go to make up complete automobile bodies, within the trade understanding of the term.

It further appears that said enumerated protests were originally docketed for hearing at Detroit, Mich., November 13, 1920, at which time they were submitted without testimony, for decision, on the following stipulation:

It is stipulated by and between the attorneys for the importers and the Assistant Attorney General for the United States that the merchandise covered by the protests above named is of the same character as that which was the subject of board's decision of July 27, T. D. 38480 (G. A. 8369), and that the record in said G. A. 8369 may be and hereby is incorporated as part of the record in these protests; and said protests are submitted for decision upon the decision referred to and the record thus made.

That subsequently, and on March 9, 1921, counsel for the Government formally moved that said submission be set aside on the ground of newly discovered evidence, which motion was granted and the protests restored to the docket for further hearing.

That on April 15, 1921, when said protests were again regularly called for hearing at Detroit, counsel for the Government made the following preliminary statement: "I have agreed that the record may

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be consolidated in protests 933509, 933620 and 934038," whereupon, as disclosed by the record, the following agreement was made by and between counsel for the interested parties:

Mr. TOMPKINS. It is the wish of counsel for the Government, as I understand it, that your honor's attention be directed to the fact as to the particular points of difference between the merchandise involved in the two earlier protests, which was stipulated to be of the same kind as that passed on by the board in T. D. 38480 (G. A. 8369), and the merchandise involved in the remaining protest, 934038, as to which Mr. Fraser, of the shipping company, when this case was called at Detroit on November 13, 1920, made a precise statement of facts as to the difference between the merchandise, auto body frames, in this case and in the earlier cases. In other words, they had been, as I understand, further advanced in manufacture by having one or two coats of priming paint applied and by having the upholstery or trimming on the back of the front seat and on the back of the rear seat. Otherwise the merchandise was identical. I ask that the statement of Mr. Fraser which appears with protest 934038 be marked as part of the official record, the statement made November 13, 1920.

General Appraiser BROWN. That statement appears to have been taken after Judge Waite left the room, after the hearing last November?

Mr. TOMPKINS. Yes; we now ask that it be formally accepted as evidence in the case

Mr. FARRELL. No objection.

General Appraiser BROWN. So ordered.

Referring to the merchandise involved in the decided cases, and differentiating between it and the articles involved in protest 934038, Mr. Fraser testified as follows:

Q. Did you see the merchandise in that case?—A. Oh, yes.

Q. Were you associated with the firm that shipped the goods in that case?—A. Yes; we are the shippers of both.

Q. What are they—chassis?—A. Body frames of metal and wood.

Q. And the goods in the case now under protest you say are practically the same?—A. Metal and wood with the addition of trimming and extra painting, but not complete.

Q. When you say not complete, what has to be done to complete them?—A. There are several processes they go through. They have to be rubbed out, coated with color and varnish, and coated with finishing varnish; all the panels and doors have to be put in inside.

Q. Now, tell me exactly what had been done to the bodies in this case which had not been done to the bodies in the decided case.—A. That does not exactly describe them. These are body frames.

* * * * * * *

Q. Did that additional painting and trimming bring them into the category of what you call an automobile body?—A: No.

Q. Aside from the coat of paint and rubbing down and trimming with fibroid had anything been done to the articles covered by this protest that had not been done to the articles in the decided case?—A. Nothing further.

* * * * * * *

Mr. TOMPKINS. Do you agree with us, Mr. Blum, that these bodies have been advanced over those in the decided case only by those two processes of painting and two processes of rubbing down, and the back of the front seat and the back of the rear seat had been upholstered?

Examiner BLUM. Yes; I agree to that.

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Among the witnesses who appeared herein was a Mr. Soule, who was also a witness in the decided case. Concerning the particular merchandise covered by protest 934038 and that involved in the decided case, he testified:

Q. Now, bearing in mind the difference between the merchandise covered by the latter protest 934038 and that involved in the earlier case 933021 in which you testified, and also the statements which you made in the earlier case, tell us whether the testimony which you gave with reference to the merchandise in the earlier case does or does not apply in all particulars to the merchandise involved in this later protest 934038.—A. It does.

* * * * * * *

Q. Mention the parts which you include in the term body.—A. The framework, the paneling, the upholstering, the floor boards, toe boards, foot rests, robe roll, carpets, top, wind shield.

* * * * * * *

Q. And when automobile bodies are shipped out from your plant on orders they are not from your parts catalogue, they are all ready to be put right on the chassis, is that correct?—A. All ready to mount on the chassis.

Q. It needs nothing more than bolting these different appliances that hold the body to the chassis?—A. That is all.

By Mr. Tompkins:

Q. I think in answer to one or two questions of counsel you referred possibly inadvertently to the merchandise involved in protests 934038 and 933509 as bodies. Is there any correction you wish to make in that respect?—A. Body frames, skeleton to the bodies; they are not bodies. The merchandise covered by the protests was not bodies in the condition it is imported.

Q. You do not then wish to amend your testimony as originally given that the term automobile body applies only to the finished article?—A. To the finished article.

Another trade witness, Edward V. Rippingille, amply qualified on the subject under discussion, testified as follows:

Q. Was it or was it not the trade practice of automobile manufacturers on or about October 3, 1913, to regard and sell as automobile bodies only such articles as were finished or complete ready to be bolted on to the chassis?—A. Automobile manufacturers sell bodies which are complete and suitable for the purchaser to use as a body.

Q. You would say that was the general practice in the trade prior to 1913, and it is to-day?—A. Absolutely. I can not conceive of any condition where an automobile manufacturer would want to sell a body that is not complete.

* * * * * * *

Q. What do you understand by the term "body in the white?"—A. A body in the course of construction, constructed to a point where the succeeding operations necessary to finish it would not interfere with it. For example, it would be impossible to paint a body completely after it was trimmed, therefore the trimming must be left off. It is processed. I would estimate 25 to 30 per cent of the total process to bring that body up to the point where it is the passenger-carrying part of an automobile.

Q. Is body in process another name for body in white?—A. Absolutely.

Q. Would you say articles like these in question which according to the evidence were imported without any floor boards, without any toe boards, and with many of the metal parts lacking, had advanced in manufacture sufficiently to be termed even bodies in white?—A. Bodies in the white is a very broad term. I could not answer the question unless I saw them. Speaking from my experience in the Hudson Motor Co. they would not be complete bodies in the white.

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Q. In what respect?—A. The floor boards and toe boards and parts of the wood work of the body.

Q. The floor boards are really then essential parts of the article which you term body in the white?—A. Yes, in my experience.

Q. What would you call this merchandise where the floor boards were lacking?—A. A body in the process of construction.

Another witness, David Oviatt, efficiency engineer with the Buick Motor Co., which has 12 branch offices besides a main office, in answer to the question what he understood by the term automobile body replied: "Well, an automobile body I understand to be the body complete, painting, trimming and hardware and everything."

Q. Would you say that was the understanding which prevailed in the trade so far as you know prior to October 3, 1913?—A. Yes, so far as my knowledge of the situation is concerned.

L. D. Crusol, a Government witness, testified:

Q. If in a given lot of merchandise, as in the case of these importations, there were the floor boards, toe boards, and various parts of the hardware pertaining to framework missing, it would be fairly accurate, would it not, to say that such articles were in the nature of bodies in process as distinguished from automobile bodies?—A. I would say it would be a body in process to an automobile manufacturer.

George W. McNair, another Government witness, testified that his plant turned out very few bodies in the white, and that he sold generally his product to private owners.

Q. I am referring to the product which you sell as an automobile body generally to your trade, that is to say to private owners generally, those have the coll or instrument board on?—A. As a rule.

Q. And they also have on them the other parts which I have mentioned in my previous question?—A. Yes.

James B. Murphy testified that for 18 years he has been engaged in production and factory efficiency work in the automobile industry, but that he has never sold automobiles or automobile bodies; that he manufactured both the finished product and the unfinished product; that he had heard the term bodies in the white in the carriage trade but never in the automobile industry; that said term is not common in the automobile industry. He testified—

Q. Is not there in your business, as well as in the automobile manufacturing industry, a term which applies to bodies in process or bodies in the white?—A. Possibly; we do not apply it at our factory.

In its ruling in the decided case (G. A. 8369, supra)—the record in which has been incorporated herein—this board said:

The inclusion or exclusion of these articles in or from said paragraph is made by the terms thereof dependent entirely upon whether or not the proof sufficiently warrants a finding that, as commercially known and recognized, the articles in question are automobile bodies, or at least have reached that point in the stage of manufacture where they are so known and designated in the trade. We do not believe that the

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present record warrants us in making an affirmative finding to that effect. Seven witnesses appeared herein for the importers, and their testimony is to the effect that these articles are merely the frames of automobile bodies, which require considerable further manufacturing processes to be applied thereto before the trade would recognize or accept the articles as automobile bodies.

Now, the merchandise covered by the present protests, 933509 and 933620, is concededly identical in character with that involved in said ruling, and the record upon which the board's findings were based has been incorporated as part of the record herein. The alleged newly discovered evidence upon which the Government relies to obtain a different classification for the present merchandise falls far short of being sufficient to accomplish that result. Even as to the merchandise covered by protest 934038—which is admittedly advanced in condition beyond that covered by the other two enumerated protests—the trade testimony at best raises a doubt, which doubt we resolve in favor of the importer. In other words, from the present record as thus made up we are unable to make a positive finding that the articles here under protest are definitely, uniformly, and generally known throughout the trade and commerce of this country as automobile bodies.

We are therefore constrained to here follow our previous ruling and hold the articles under consideration dutiable at the rate of 15 per cent ad valorem under paragraph 176 as manufactures composed in chief value of wood, as claimed by the importer. That claim in each of the protests is therefore sustained and the decision of the collector classifying the articles under paragraph 119 as automobile bodies is in each instance, reversed.

(T. D. 38995—G. A. 8499.)

Neckties in the piece.

Woven silk fabrics, with fast edges, measuring about 4½ inches in width and several yards in length, and adapted and used solely for the making of neckties which are definitely indicated by a "doup edge" produced by the dropping of certain threads in the process of weaving at regular intervals of about 36 inches throughout the length of the fabric, and also by the introduction of colored threads on either side of the "doup edge" which, after the fabric is cut at the "doup edge" into individual neckties, serve to ornament and to prevent the ends of the neckties from unraveling, are properly dutiable as silk wearing apparel, partly manufactured, at the rate of 50 per cent ad valorem under paragraph 317, tariff act of 1913, rather than as woven silk fabrics in the piece under paragraph 318 of said act. G. A. 6116 (T. D. 26613) cited and followed.

United States General Appraisers, New York, January 20, 1922.

In the matter of protest 939491-62973 of Wilson Bros. against the assessment of duty by the collector of customs at the port of Chicago.

[Affirmed.]

Comstock & Washburn (*J. Stuart Tompkins* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Harry M. Farrell*, special attorney) for the United States.

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Before Board 2 (FISCHER, HOWELL, and WELLER, General Appraisers).

HOWELL, General Appraiser: The goods in question are described in the invoice as "Silk bat end ties." They were returned by the appraiser as silk wearing apparel, partly manufactured, and were assessed for duty by the collector at the rate of 50 per cent ad valorem under the provision in paragraph 317, tariff act of 1913, for "articles of wearing apparel of every description, * * * made up or manufactured in whole or in part by the tailor, seamstress, or manufacturer; * * * composed of silk or of which silk or silk and india rubber are the component materials of chief value." The importers claim that the goods are properly dutiable at the rate of 45 per cent ad valorem as woven silk fabrics under paragraph 318 of said act, or as silk ribbons, bandings, etc., not exceeding 12 inches in width, at the same rate under the provisions of paragraph 316 of said act.

The goods in question consist of a woven silk fabric, with fast edges, measuring about 4½ inches in width and several yards in length. Throughout the length of the fabric, at regular intervals of about 36 inches, there is what is called a "doup edge," on either side of which colored threads have been introduced, which form an ornamental design about three-eighths of an inch in width and running across the width of the fabric.

It appears from the testimony of the assistant manager of the neckwear department of the importing firm that the goods are imported by his firm for the sole purpose of making neckties, and that they are not suitable for any other use; that in separating the fabric into pieces for individual neckties the fabric is cut at the "doup edge," and, after cutting, the colored threads serve to ornament and to prevent the ends of the neckties from unraveling.

Although the importers admit that the goods are adapted and used solely for the making of neckties, they contend that in their condition as imported they are neither neckties nor partly made neckties, but rather woven fabrics in the piece, and are therefore not dutiable as silk wearing apparel, partly manufactured.

In this view we can not concur. The goods unquestionably have been woven in the piece, but in the process of their fabrication they have been manufactured "in part" into individual neckties which are definitely indicated by the "doup edge," which is produced by the dropping of certain threads in the process of weaving, and also by the introduction of colored threads on either side of the "doup edge," which, as we have stated, not only serve an ornamental but also a utilitarian purpose. The construction of the fabric, therefore, not only shows that the goods are designed and adapted for use in the making of neckties but the testimony shows that that is the sole use for which they are suitable and adapted.

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In Kaskel's case, G. A. 6116 (T. D. 26613), we held that men's silk scarfs imported in pieces of various lengths, each scarf being definitely indicated by the absence of warp and filling threads at intervals where they had only to be cut to separate them into individual scarfs, and which were adapted for no other use than as scarfs, were dutiable as articles of wearing apparel, manufactured in part.

Following that decision, and the authorities therein cited, we hold that the goods in question are properly dutiable as silk wearing apparel, partly manufactured, as assessed. Note also Sachs' case, G. A. 7460 (T. D. 33406).

The protest is accordingly overruled.

(T. D. 38996—G. A. 8500.)

Power of collector—Sufficiency of protest.

1. SECTION 2984, REVISED STATUTES, CONSTRUED.

Section 2984 of the Revised Statutes is a grant of power to the Secretary of the Treasury and under it the collector has no power or authority to abate or refund duties except that he may be directed by the Secretary of the Treasury to do so.

2. SUFFICIENCY OF PROTEST.

A protest which makes no claim except under section 2984 of the Revised Statutes is not sufficient to grant an importer relief under provisions of law not therein claimed or referred to.

United States General Appraisers, New York, January 20, 1922.

In the matter of protest 934081 of Stone & Downer Co. against the assessment of duty by the collector of customs at the port of Boston.

[Affirmed.]

Blodgett, Jones, Burnham & Bingham and *Waterhouse & Lockett* (*Joseph F. Lockett* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Frank P. Wilson, Charles D. Lawrence*, and *John J. Mulvaney*, special attorneys), for the United States.

Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers).

HAY, General Appraiser: On or about April 29, 1919, the bark *Professor Koch*, navigating the Atlantic Ocean, was by stress of weather driven onto Scituate Beach, and certain merchandise, to wit, packages of mohair, constituting a part of the cargo, were alleged to have been damaged. The protestant made claim to the Secretary of the Treasury under the provisions of section 2984 of the Revised Statutes for an abatement and refund of the duties upon said damaged articles. Section 2984 reads as follows:

SEC. 2984. The Secretary of the Treasury is hereby authorized, upon production of satisfactory proof to him of the actual (industry) (injury) or destruction, in whole or in part, of any merchandise by accidental fire or other casualty, while the same remained in the custody of the officers of the customs in any public or private warehouse under bond, or in the appraisers' stores undergoing appraisal, in pursuance of law or regulations of the Treasury Department, or while in transportation under

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bond from the port of entry to any other port in the United States, or while in the custody of the officers of the customs and not in bond, or while within the limits of any port of entry, and before the same have been landed under the supervision of the officers of the customs, to abate or refund, as the case may be, out of any moneys in the Treasury not otherwise appropriated, the amount of impost duties paid or accruing thereupon; and likewise to cancel any warehouse bond or bonds, or enter satisfaction thereon in whole or in part, as the case may be.

A somewhat extensive correspondence occurred between the parties in interest and the Secretary of the Treasury, all of which has been offered and received in evidence in this case. The Secretary of the Treasury denied the application and refused to abate or refund the impost duties thereon.

This case was once heretofore before this board submitted solely upon the question of the jurisdiction of the board to hear and try the issues presented. The board held that it had such jurisdiction, and ordered that the case be placed upon the next docket at Boston for further proceedings—Stone & Downer Co.'s case, G. A. 8379 (T. D. 38516). It came up for trial and evidence was offered and received, consisting of the correspondence between the Treasury Department and the importer relative to the application for an abatement and refund of duties, and the testimony of witnesses relative to the circumstances of the accident to the boat and the damage done to the merchandise, including some testimony of a more or less expert nature as to when that damage was sustained. In G. A. 8379, supra, we said, "The collector's action in assessing duty and the importer's action in filing a protest against that assessment bring the case properly before this board."

The first question that presents itself in the case now at bar is, Could the collector within the law satisfy the protest in question? The second is, Does the protest raise any issue growing out of which this board could grant the relief as requested? The protest reads as follows:

We hereby protest against your liquidation and assessment of duties on our entry of 562 bales of mohair marked and numbered as follows:

Marks.	Numbers.	Number of bales.
W. K. S.	1-259, 161	260
B. A. S.	1-61	61
H. W. H.	1-10	10
	12-184	173
	221-250	30
L. L. B.	1-28	28
Total		562

This mohair was imported in the bark *Professor Koch*, which arrived May 5, 1919. The date of entry was May 17, 1919. The entry number was 7289, and the date of liquidation February 12, 1920.

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The grounds of our objection and protest are that we are entitled under section 2984 of the Revised Statutes to an abatement or refund of the duty assessed and paid by reason of actual injury and destruction of the mohair—

First. Because such injury and destruction occurred while the goods were within the limits of a port of entry and before they had been landed. and

Second. Because such injury and destruction occurred while the goods were in the custody of the officers of the customs and not in bond.

We claim that we are entitled to a refund or rebate on the grounds above stated and that the duties assessed by you are not the legal duties with which said goods are chargeable.

It will be seen that the solitary claim of the protest is that the collector erred in the assessment and liquidation of duties upon the ground that those duties could not be legally assessed for the reason that the protestant is entitled under section 2984 to the abatement and refund of the duties assessed and paid by reason of the injury and destruction of the mohair. The remainder of the protest is simply a statement identifying the merchandise and an amplification of the claim under section 2984. There is no other claim made in the protest.

The collector is given no discretionary power to act or refuse to act by section 2984. That is a grant of power to the Secretary of the Treasury, and any claim under that section of the law must be addressed to the Secretary, and the Secretary is authorized by the law to abate and refund the duties "upon the production of satisfactory proof to him" of certain conditions named in the law. The collector, therefore, can only abate and refund the duties under the provisions of section 2984 if the Secretary authorizes it, and the Secretary before authorizing it must have had produced to him satisfactory proof. In the case at bar the Secretary evidently did not have produced proof satisfactory to him, as he did not authorize the collector to abate or refund the duty. The Secretary not having authorized it, the collector had no power under this provision of the law to abate or refund the duties. It is scarcely necessary in the case at bar to go into the question as to whether or not the Secretary's action under section 2984 is subject to review by the courts, for even if it is, it is not subject to review in a proceeding of this character. The collector is given no power to abate, refund, or remit duties under section 2984. This proceeding is one which reviews the action of the collector only. No claim is made by the importer that he is entitled to a remission of duties under other provisions of law, and under section 2984 the collector could not, unless authorized by the Secretary of the Treasury, abate, refund, or remit the duties. An elaborate argument is made to show that this board has power to reach beyond the action of the collector to that of the Secretary of the Treasury. This, we think, is not sound. Under the decided weight of authority we think the Secretary's duties under section

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2984 are discretionary and not merely ministerial. In the case of the School of Magnetic Healing *v.* McAnnulty (187 U. S., 94) there are some expressions used by the court out of which it might be contended that the courts have power upon a writ of injunction to restrain a Cabinet official from performing a discretionary duty. We do not think the decision of that case necessarily carries the law that far. If it does, it is in conflict with a long line of authorities, commencing with Marbury *v.* Madison (1 Cranch., 137) and adhered to with great unanimity ever since. It is true that the discussion of the learned Chief Justice in Marbury *v.* Madison upon the question of judicial interference with the discretionary duties of administrative officials was to some extent outside the issue presented by the case, but many cases have followed it in which the doctrine of law therein so ably announced by Chief Justice Marshall has been adhered to. In the case of Decatur *v.* Paulding (14 Pet., 497) Chief Justice Marshall's successor, Chief Justice Taney, in an extremely carefully written opinion followed the dicta of Marbury *v.* Madison. A long line of authorities could be cited upon this subject. Justice Bradley in reviewing them up to that time in the case of Dunlap *v.* Black (128 U. S., 40) very tersely states the law.

But, as stated above, if the action of the Secretary of the Treasury under section 2984 is not such a discretionary act as can not be reviewed by the courts it must, we think, under well settled rules of law be reviewed in a proceeding otherwise than through a protest against the action of the collector who has unquestionably discharged his duty in refusing to grant the protestant relief under section 2984 when not directed by the Secretary of the Treasury to do so. Mills & Gibb's case, G. A. 7893 (T. D. 36347), is, we think, directly in point upon this proposition. That case was thereafter affirmed by the Court of Customs Appeals.

There may be some claim, although it has not been urged upon us, certainly not with any degree of definiteness, that the protest is broad enough to grant relief to the protestant under other provisions of law. We think not. The protest is entirely confined to a claim under section 2984. No other provision of law is referred to, and it is a well-settled principle that all merchandise is dutiable unless exempted therefrom by some express provision of law. No other claim is made in the protest.—G. A. 1105 (T. D. 12333); United States *v.* Knowles (126 Fed., 737; T. D. 24922); United States *v.* Bayersdorfer (126 Fed., 732; T. D. 24923); and the decisions in the following protests, 109930, June 11, 1904; 200582, October 13, 1906, and 276515, May 20, 1908.

The protest is therefore, for the reasons herein stated, overruled.

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(T. D. 38997—G. A. 8501.)

Appraiser's special report received by collector more than 30 days after protest was filed.

The collector assessed duty on decorated glass bottles, containers of perfumery, at 60 per cent ad valorem and the importer protested against such assessment, claiming that such bottles were properly dutiable at either 30 per cent ad valorem under paragraph 83 or at 45 per cent ad valorem under paragraph 84, tariff act of 1913. When the protest was called for hearing there was no appearance for the importer, and it was therefore submitted for decision on the official record. The United States appraiser, specially reporting on the protest at the request of the collector, more than 30 days after the filing of the protest, stated that error had been made in his original return and that the bottles should have been returned for duty at 45 per cent. The collector in transmitting the protest to the Board of General Appraisers signifies that he adopts the appraiser's special report and evidences a willingness to reliquidate the entry accordingly if authorized to do so by the board.

Held (1) That notwithstanding the importer did not appear when the protest was called for hearing it was the duty of the Board of General Appraisers to examine the official record and decide the issue raised by the protest.

(2) That under the tariff act of 1913 and the existing Treasury Regulations the collector was not required to forward the protest to the Board of General Appraisers within 30 days of the filing thereof with the collector, although the jurisdiction of that officer to reliquidate ceased at the end of that period.

(3) The collector in adopting the appraiser's special report made it his own, and the assessing officer having thus confessed that he made error, the Board of General Appraisers will take notice of such fact and sustain the protest claim accordingly. G. A. 8006 (T. D. 36897); G. A. 7837 (T. D. 36046); National Hat Pin Co. *v.* United States (5 Ct. Cust. Appls., 435, T. D. 34971); Tower Manufacturing and Novelty Co. *v.* United States (6 Ct. Cust. Appls., 267, T. D. 35478), and United States *v.* Coste (7 Ct. Cust. Appls., 504) cited.

United States General Appraisers, New York, January 25, 1922.

In the matter of protest 939993 of Le Benart Import Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Importer not represented by counsel.

William W. Hoppin, Assistant Attorney General, for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers; Sullivan, G. A., dissenting).

McClelland, General Appraiser: The merchandise, the classification of which is in issue, consists of decorated glass bottles, containers of perfumery. The appraiser returned these bottles for duty at the rate of 60 per cent ad valorem under the provisions of paragraph 48 of the tariff act of 1913. The protest makes alternative claims for duty at 30 per cent under paragraph 83 or at 45 per cent under paragraph 84 of the same act.

When the case was called for hearing there was no appearance for the protestant and it was accordingly so noted. Of course the onus was on protestant to not only sustain by evidence its claim

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but in addition to show that the collector's assessment was erroneous. Nevertheless, although no such effort was made, if it appears from the official papers transmitted by the collector that an error was made in classification, and that one of the claims made by protestant is well founded and should be sustained, it is clearly the duty of the board to so decide.

It has been repeatedly held that the primary functions of a protest are to direct the attention of the collector to the fact that the protestant claims that an error in classification has been made, and point the collector to the provision of the statute under which it is claimed classification should have been made. See G. A. 8006 (T. D. 36897) and cases therein cited.

There are certain facts in the procedure of appraisement and classification of merchandise, the liquidation of the entries covering the same, and protests against such liquidations with which we can not help being familiar and of which we can not fail to take judicial notice. Those pertinent to the consideration of this case may be enumerated as follows:

(1) Notwithstanding that the statutes only impose upon United States appraisers the duty of finding the foreign market value of merchandise as a basis for the assessment of duty by the collector, it has been the practice for so long a time that the memory of man runneth not to the contrary for appraisers in making return of invoices to the collector to note thereon (as was done on the invoice in this case), in addition to their findings of value (in an advisory way), a description of the merchandise, together with the number of the paragraph of the law under which it should be classified, and the rate of duty to which it should be subjected.

(2) That for an equally long period of time collectors have, except in very remote instances, uniformly followed such advisory classifications by appraisers.

(3) That upon the filing of a protest by an importer against the collector's liquidation of an entry, such protest is, in the regular course of business in the collector's office, transmitted to the appraiser for a special report thereon (as was done in this case).

(4) That in such instances as an appraiser in his special report on a protest advises the collector that error was made in his original return on the invoice and indicates what the return should have been, such advice is uniformly followed by either the reliquidation of the entry or the transmittal of the protest to the Board of General Appraisers bearing a notation that such protest is partly valid (as was done in this case) and that the collector will reliquidate the entry after the Board of General Appraisers has made its decision on all claims.

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Article 1120 of the existing Customs Regulations, promulgated by the Secretary of the Treasury under his general statutory powers, defining the duties of an appraiser, contains the following:

The appraiser also describes the merchandise in his return of examination in such terms as will enable the collector to classify the same for duty, and reports whether the measurements and quantities (except of such goods as are weighed, gauged, or measured by the surveyor) agree with the invoice, and if they do not so agree he reports the correct measurements or quantities.

Everyone at all familiar with customs administration, especially at the port of New York, knows that the collector seldom, if ever, sees merchandise, or even samples thereof, that he is called upon to classify. He is of course in law the classifying officer, but he is in no way limited in seeking advice before finally acting, and who could be better qualified to advise than the appraiser, whose assistants are specially selected because of their technical qualifications to judge of the character and composition of merchandise passing under their supervision?

After receipt of this protest from the collector the appraiser made report thereon as follows:

The merchandise in question consists of decorated glass bottles, containers for perfumery, returned for duty at the same rate as their contents, namely, 60% ad valorem under paragraph 48, act of 1913. It should have been returned for duty as decorated glass bottles, filled or unfilled, whether their contents be dutiable or free, at 45% ad valorem under the specific provisions of paragraph 84. Note amended return.

Of course, standing by itself, just as it came from the appraiser, this report could not affect the collector's liquidation, but there was nowhere any restraint upon the collector from adopting as his own the fact stated by the appraiser that an error in classification had been made, and that is just what he did do in effect as evidenced by the indorsement we find on the protest, as follows:

Respectfully referred to the Board of U. S. General Appraisers for decision.

Duty was assessed at the rate applicable in the present tariff to imported merchandise of the kind described in the entry or in the return of the appraiser on the invoice.

From the appraiser's special report herewith in answer, the protest appears to be partly valid. If authorized this office will reliquidate the entry accordingly after your board has made its decision on all claims.

The protest and fee were received within statutory time. This precise question as to the effect of the appraiser's special report adopted by the collector was passed upon in the Coste case, G. A. 7837 (T. D. 36046), where the majority of the board sustained the importer's claim for the lower rate of duty. In that case the writer said in his concurring opinion as to the special report:

It surely would not be gainsaid that if the collector, instead of forwarding the special report as it came from the appraiser, had embodied in his letter exactly the

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statements that it contains, the board would have been warranted in accepting them as being sufficient upon which to base a finding that the merchandise in question was wool fabric of which silk was chief value and reach the conclusion that duty should have been assessed thereon at the rate of 45 per cent under paragraph 318 of the tariff act of 1913, as claimed.

The board held in that case that the rulings of the Court of Customs Appeals in the National Hat Pin Co. case (5 Ct. Cust. Appls., 435; T. D. 34971) and the Tower Manfr. & Novelty Co. case (6 Ct. Cust. Appls., 267; T. D. 35478) were not controlling because of the changes in the administrative provisions of the tariff laws since the regulation of the Treasury Department (1073) making it mandatory for the collector to transmit to the Board of General Appraisers each unsustained protest within 30 days after the same was filed. It is true that the Coste case was reversed by the Court of Customs Appeals, but such reversal, the court record shows, was on the merits upon consent and did not affect the holding of the board as to the influence of the appraiser's report adopted by the collector as his own.

The collector by his act in transmitting this protest to the board conceded that his jurisdiction to reliquidate was gone, but just as plainly he accepted and made his own the facts stated in the special report of the appraiser which was in effect a confession on the part of the collector that an error had been made in classification, and that he stood ready, if authorized in a decision of the board, to rectify it. The collector for all purposes in such a proceeding as this is the Government. He took from the protestant money which, upon his own statement, he was not authorized under the law to do, and now signifies a willingness to refund it. It would not seem that there was anything in the law to justify the defeat of his purpose on the mere technicality that the appraiser's special report was received more than 30 days after the protest was filed.

We hold that the merchandise is subject to duty at the 45 per cent rate under paragraph 84, and the protest is therefore sustained to that extent.

DISSENTING OPINION.

SULLIVAN, General Appraiser: I am unable to concur with my associates in their disposition of this case. The rule enunciated by the majority opinion in my judgment is subversive of, and contrary to, the law governing the jurisdiction, and the introduction of testimony by the Board of General Appraisers.

The merchandise consists of bottles filled with perfumery, returned for duty at the same rate as their contents, namely, 60 per cent ad valorem under paragraph 48, act of 1913.

The entry was liquidated by the collector, who adopted this advisory classification of the appraiser, on the 4th of May, 1921.

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On April 26, 1921, prior to liquidation, the importer made the following protest:

NEW YORK, *April 26, 1921.*

Hon. COLLECTOR OF CUSTOMS, *Port of New York.*

SIR: We hereby protest against the assessment of duty on entries described below.

We claim that the glass bottles, covered by invoice and entry specified, classified under paragraph 48 at 60% are dutiable at 45% under paragraph 84, or are dutiable under paragraph 83 at 30%.

We respectfully request reliquidation and refund of the amount exacted in excess.

S/S Lafayette, arrived Aug. 5, 1920, cases 231/3, entry #17409.

Respectfully,

LE BENART IMPORT CO.

This protest was filed in the New York Customhouse on May 10, 1921, six days subsequent to liquidation.

Subsequently the appraiser answered the protest as follows:

APPRAISER'S OFFICE, PORT OF NEW YORK,
July 5, 1921.

Protest No. 5843. Importer Le Benart Import Company,
Invoice No. —. Entry No. 17409. Date Aug. 5/20.

The merchandise in question consists of decorated glass bottles, containers for perfumery, returned for duty at the same rate as their contents, namely, 60% ad valorem under paragraph 48, act of 1913. It should have been returned for duty as decorated glass bottles, filled or unfilled, whether their contents be dutiable or free, at 45% ad valorem under the specific provisions of par. 84. Note amended return.

Respectfully,

F. J. H. KRACKE, *Appraiser.*

This amended return, I understand, is the following notation on the invoice in red ink:

Dec. Glass bottles, 45% Par. 84, Val. 1155.45 fcs. incl., special report protest 5843.

The number 5843 is evidently the collector's number on the protest in question.

The collector then made the following indorsement on the protest and forwarded it to the board for decision:

JULY 19, 1921.

Respectfully referred to the Board of U. S. General Appraisers for decision.

Duty was assessed at the rate applicable in the present tariff to imported merchandise of the kind described in the entry or in the return of the appraiser on the invoice.

From the appraiser's special report herewith in answer, the protest appears to be partly valid. If authorized, this office will reliquidate the entry accordingly after your board has made its decision on all claims.

The protest and fee were received within statutory time.

GEO. W. ALDRIDGE, *Collector.*

When the cause was called for hearing the protestant did not appear.

I have set out all the record in this case. It presents three questions: (1) When did the collector act? (2) When was the protest filed? (3) What is the effect of an appraiser's report made after the jurisdiction of the collector ceased?

The report of the appraiser, dated July 5, 1921, was made more than 30 days after the liquidation of May 4, 1921, and at a time when

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the protest was not within the jurisdiction of the collector. It was not offered in evidence. The status of the merchandise as to the rate and amount of duty became complete on the date of liquidation, to wit, May 4, 1921. The protestant was entitled to 30 days thereafter within which to file a protest. The protest, while dated prior to liquidation, was filed subsequent thereto, viz, May 10, 1921, and the protest and protest fee were received within 30 days after liquidation. It was filed in time, and raised a question as to the proper action of the collector.

The filing of a protest does not have the effect of changing the classification of the collector. It is necessary to bring to the board's attention facts overcoming the presumption of correctness attaching thereto. The special report of the appraiser, or answer to the protest, filed more than 30 days after liquidation, and after the filing of the protest and payment of the protest fees, does not establish a single fact to contravene the rate and amount of duty as ascertained by the collector on the date of liquidation. It is against the collector's action the protest is filed. The filing of the protest and the payment of the fee ended the jurisdiction of the collector. The appraiser's report, filed more than 30 days after the jurisdiction of the collector ceased, is without any probative effect whatever. Under existing law it was then his duty to forward this protest to the Board of General Appraisers for action. The protest was held by the collector until July 19, or more than two months after liquidation. The retention of the protest by the collector did not extend his jurisdiction. It was to all intents and purposes within the control and jurisdiction of the board. It would not be contended that a letter written by the collector after the board had jurisdiction of a protest would have any probative effect.

In Francois Coste's case, G. A. 7837 (T. D. 36046; 30 Treas. Dec., 15), the board had before it practically the question now involved. The board, by a majority thereof, held the appraiser's report made 30 days after the filing of the protest could be considered notwithstanding it was not offered in evidence. That case was appealed to the Court of Customs Appeals and was reversed without an opinion being filed. The writer hereof dissented in that case, and refers to his dissenting opinion as his view of the law with reference to an appraiser's report.

In Marshall Field & Co.'s case, G. A. 8001 (T. D. 36866; 31 Treas. Dec., 533), Board 3 had before it practically the issue involved in this case, and it there said:

The finding of the collector was that the goods were dutiable under paragraph 98, as above stated. In his letter of transmittal no reference whatever is made to the report of the appraiser. In protest 767573 the appraiser's report is in the following

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language (which is a fair sample of the report in all the cases so far as the question at issue is concerned):

The merchandise consists of sculptured marble benches and bowls. In view of department's construction of paragraph 376, act of 1913, contained in T. D. 33985 and T. D. 34438, the bowls would now be returned for duty under paragraph 376 at 15 per cent ad valorem. The benches are dutiable at 45 per cent ad valorem under paragraph 98, which specially provides for monuments, benches, and vases.

The importers have evidently submitted their case with the view of having this suggestion of the appraiser followed in derogation of the finding of the collector. Had it been referred to by the collector in his report to the board as having been considered by him, as was the case in Coste's case, G. A. 7837 (T. D. 36046), we do not think it would have been sufficient upon which to base a finding contrary to the finding of the collector. In our view it has no force whatever to determine a question of fact, and can not be considered as establishing a conclusion of law.

It will be noted the collector did not adopt the report of the appraiser as he did in the Coste case.

In Sears, Roebuck & Co.'s case, G. A. 7650 (T. D. 34998; 27 Treas. Dec., 627), Board 2 had before it a question similar to that involved in this case. In that case the importers submitted their case upon the report of the appraiser that accompanied the protest when transmitted to this board. The report provided as follows:

The merchandise consists of photographic camera tripods composed of brass, classified for duty at 20 per cent ad valorem under paragraph 167, act of 1913. This class of merchandise is now returned under paragraph 380. The claim of the protestant is well founded.

In that condition of the record, Board 2 held:

Notwithstanding the positive declaration of the local appraiser that "the claim of the protestant is well founded," we must confess that we are utterly unable to discover anything in the record before us which would warrant us in so holding. Neither do we for a moment concede that any apparent conclusion on the part of an appraiser with respect to the dutiable classification of an imported article bears with it any sanction of law, nor that it is even entitled to be credited with any legal effect whatever. So far as the classification of imported merchandise is concerned, such a declaration by an appraising officer, whose sole duty under the statute is to ascertain and determine the value of such merchandise, must be deemed to be absolutely meaningless, as it can not be considered as a finding of fact nor treated as a conclusion of law. As to the precise status to be given such apparent conclusions on the part of the appraising officers, and the legal weight to be accorded them in the determination of the correct dutiability of an article of imported merchandise, see the recent opinion of the United States Court of Customs Appeals in the case of the National Hat Pin Co. *v.* United States (5 Ct. Cust. Appls., 435; T. D. 34971).

It will be observed from these citations the appraiser's report is a mere allegation, and unless sustained by some fact does not have weight. The collector may or may not act thereon. In the case at bar he had acted long prior to the making of the report. He acted on May 4, 1921. He did not act upon the special report. Therefore the statement on the back of the protest evidencing his classification on the date of liquidation is the only fact that can be considered by the board. It reads:

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Duty was assessed at the rate applicable in the present tariff to imported merchandise of the kind described in the entry or in the return of the appraiser on the invoice.

By that statement he gave evidence of his classification on the date of liquidation, May 4, 1921. The subsequent memorandum of the collector, in view of the fact that he did not have jurisdiction over the protest, and at a time when the appraiser did not have authority to advise him, is wholly useless and void.

The question as to the effect to be given to an appraiser's report, if made within time, is rather a serious one. It is a pleading upon which the Government stands. It is doubtful if it has any probative effect. If it has, it should be offered in evidence. The proper and legitimate way is to establish the facts set out in the report. This can be accomplished with little expense or trouble to either party. It is Board 1's prevailing rule that, if needed to sustain the contention of the protestant, the appraiser's report should be offered in evidence. This is a salutary position to take. If it states a fact uncontroverted it has weight; if it does not state a fact it is without weight. If it states a fact, and is controverted, then weight is to be given to the established fact; whether it sustains or opposes the appraiser's report is immaterial. It is the rate and amount of duty assessed by the collector that must be overcome. The appraiser's action does not carry weight.

What is the primary function of a protest? The statute states its function. The importer must, if he wishes to challenge the rate and amount of duty chargeable upon imported merchandise—

File a protest or protests in writing with the collector, setting forth therein distinctly and specifically, and in respect to each entry or payment, the reasons for his objections thereto.

The failure to file a protest, even though the rate and amount of duty are wrong, will not permit action against the Government for the recovery of the tax wrongfully paid. A protest is a prime necessity.

The statute further provides—

Such protest shall be deemed to be finally abandoned and waived unless within thirty days from the date of filing thereof the person who filed such notice or protest shall have deposited with the collector of customs a fee of $1 with respect to each protest.

There is nothing in this law providing for a period within which the collector may examine or reexamine his own ruling. It has been the custom to do so, but I prefer to be guided by the law rather than a custom.

Then the law continues in specific terms—

Upon such payment of duties, protest, and deposit of protest fee, the collector shall transmit the invoice and all the papers and exhibits connected therewith to the board of nine general appraisers, for due assignment and determination as provided by law; * * *

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It is impossible to construe this language in any way except as it reads. The verb used is "*shall* transmit;" not "*may* transmit." Unequivocally the collector is deprived of jurisdiction upon the payment of the protest fee. That statute can not be destroyed by regulation; if regulations may destroy it, what is the necessity of legislative bodies? "Upon such payment of * * * protest fee, the collector *shall* transmit * * * the papers." Therefore, in my opinion, upon the filing of the protest and the *payment of the fee* the jurisdiction of the collector ceases and the jurisdiction of the board attaches.

Would it be held competent testimony, after the board's jurisdiction has attached, and the cause is ready for hearing, if a letter was received from the collector stating he believed his former action was wrong and asking the board to change his ruling and enter a judgment accordingly? Certainly not. The fact may be proven. If the communication of the collector to the board in this case, made after his jurisdiction ceased, stating he believed he was wrong, is sufficient to cause the Board of General Appraisers, as the majority holds, to enter a finding changing the classification and rate of duty, then it can do so on a letter written by the collector at any time prior to trial. That is the logical conclusion of the majority holding.

In my judgment the protest should be overruled.

(T. D. 38998.)

Common carrier.

Approval of common carrier's bond.

TREASURY DEPARTMENT, *January 28, 1922.*

To Collectors of Customs and Others Concerned:

The common carrier's bond of the Farmers Grain and Shipping Co., Devils Lake, N. Dak., dated December 22, 1921, was approved January 23, 1922, and has been filed with the collector of customs at Pembina, N. Dak.

(109943.) ELMER DOVER, *Assistant Secretary.*

(T. D. 38999.)

Amendment of article 438, Customs Regulations of 1915.

Grain from Canada to be ground and returned.

TREASURY DEPARTMENT, *February 4, 1922.*

To Collectors of Customs and Others Concerned:

The department's attention has been called to the danger to the revenue if permission is granted to Canadian farmers to bring Canadian grain for a considerable distance across the border to mills in

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the United States outside the limits of customs ports for grinding and return under the act of January 9, 1883, as provided for in article 438 of the Customs Regulations of 1915.

In order that the revenue may be more effectively safeguarded in respect to such grain, article 438 of the Customs Regulations of 1915 is hereby amended by adding the following:

In cases where the mill at which such grain is to be ground is not located at a port of entry, a deposit of the duties on such grain shall be taken, such deposit to be refunded upon receipt of the sworn statement of the owner of the mill that the said grain has been received at the mill, and evidence satisfactory to the collector that the product of the grinding thereof, less the toll, has been returned to Canada.

(109940.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39000.)

Foreign currencies—Rates of exchange.

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), emergency tariff act of May 27, 1921.

TREASURY DEPARTMENT, *February 4, 1922.*

To Collectors of Customs and Others Concerned:

The appended table of the values of certain foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), act of May 27, 1921, during the period from January 13 to January 26, 1922, both inclusive, is published for the information of collectors of customs and others concerned.

(103512.) ELMER DOVER, *Assistant Secretary.*

Values of foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), emergency tariff act of May 27, 1921.

PERIOD JANUARY 13 TO 19, 1922, INCLUSIVE.

Country.	Name of currency.	Jan. 13.	Jan. 14.	Jan. 16.	Jan. 17.	Jan. 18.	Jan. 19.
Europe:							
Austria	Krone	$0.000333	$0.000339	$0.000336	$0.000316	$.000316	$0.000313
Belgium	do	.0786	.0788	.0787	.0783	.0780	.0783
Bulgaria	Lev	.007242	.00715	.007158	.007092	.007175	.007042
Czechoslovakia	Krone	.016106	.016413	.016578	.016822	.016803	.016919
Denmark	do	.2000	.1999	.1998	.1998	.1999	.2007
England	Pound sterling	4.2327	4.2308	4.23	4.2265	4.2235	4.2247
Finland	Markka	.0184	.018686	.018643	.0187	.018714	.018586
France	Franc	.0820	.0822	.0824	.0818	.0815	.0820
Germany	Reichsmark	.005363	.005473	.005414	.005311	.005147	.005172
Greece	Drachma	.0437	.0438	.0436	.0435	.0437	.0437
Holland	Florin or guilder	.3683	.3684	.3682	.3678	.3671	.3668
Hungary	Krone	.001606	.001625	.001616	.001463	.001244	.001278
Italy	Lira	.0437	.0442	.0441	.0437	.0435	.0438
Norway	Krone	.1569	.1564	.1561	.1563	.1565	.1572
Poland	Polish mark	.000354	.000353	.000347	.000342	.000344	.000342
Portugal	Escuda	.0774	.0778	.0769	.0764	.0742	.0730
Rumania	Leu	.007992	.008083	.007958	.007863	.007775	.00772
Serbia	Dinar	.01358	.01382	.0139	.01388	.01384	.0137
Spain	Peseta	.1497	.1498	.1498	.1498	.1496	.1497
Sweden	Krona	.2495	.2495	.2493	.2489	.2488	.2497
Switzerland	Franc	.1941	.1943	.1942	.1942	.1942	.1945
Yugoslavia	Krone	.003378	.003447	.003466	.003453	.003444	.003422

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Values of foreign currencies, etc.—Continued.

PERIOD JANUARY 13 TO 19, 1922, INCLUSIVE—continued.

Country.	Name of currency.	Jan. 13.	Jan. 14.	Jan. 16.	Jan. 17.	Jan. 18.	Jan. 19.
Asia:							
China	Hongkong dollar	$0.5511	$0.5514	$0.5563	$0.5524	$0.5507	.....
Shanghai	Tael	.7450	.7459	.7463	.7456	.7449	.....
China	Mexican dollar	.5436	.5469	.5435	.5413	.5423	.....
Do	Chefoo tael	.....	.....	.....	.....	.....	$0.8000
Do	Hankow tael	.....	.....	.....	.....	.....	.7867
Do	Shanghai tael	.....	.....	.....	.....	.....	.7429
Do	Tientsin tael	.....	.....	.....	.....	.....	.7900
Do	Hongkong dollar	.....	.....	.....	.....	.....	.5496
Do	Mexican dollar	.....	.....	.....	.....	.....	.5388
Do	Tientsin or Peiyang dollar.	.....	.....	.....	.....	.....	.5529
Do	Yuan dollar	.....	.....	.....	.....	.....	.5529
India	Rupee	.2790	.2788	.2790	.2782	.2785	.2771
Japan	Yen	.4768	.4769	.4762	.4769	.4764	.4750
Singapore (S. S.)	Dollar	.4817	.4783	.4817	.4783	.4800	.4817
North America:							
Canada	do	.945625	.946719	.946094	.945938	.9475	.948125
Cuba	Peso	.996671	.996875	.996878	.997085	.997085	.996878
Mexico	do	.4853	.496825	.4868	.4875	.487375	.489625
Newfoundland	Dollar	.943542	.9450	.944167	.943958	.944375	.946458
South America:							
Argentina	Peso (gold)	.7588	.7580	.7579	.7571	.7573	.7614
Brazil	Milreis	.1265	.1258	.1258	.1259	.1251	.1250
Uruguay	Peso	.7242	.7247	.7247	.7229	.7216	.7229

PERIOD JANUARY 20 TO 26, 1922, INCLUSIVE.

Country.	Name of currency.	Jan. 20.	Jan. 21.	Jan. 23.	Jan. 24.	Jan. 25.	Jan. 26.
Europe:							
Austria	Krone	$0.000313	$0.000305	$0.0003	$0.000280	$0.000267	$0.000277
Belgium	Franc	.0776	.0777	.0773	.0778	.0785	.0783
Bulgaria	Lev	.007063	.0071	.00695	.006933	.0070	.00695
Czechoslovakia	Krone	.017119	.017797	.018525	.019713	.018794	.019094
Denmark	do	.2001	.1998	.2001	.2003	.2006	.2004
England	Pound sterling	4.2092	4.2120	4.21	4.2235	4.2257	4.2282
Finland	Markka	.018586	.018543	.018586	.018614	.018686	.018657
France	Franc	.0810	.0810	.0803	.0811	.0818	.0816
Germany	Reichsmark	.004948	.005007	.004806	.004697	.004957	.004868
Greece	Drachma	.0439	.0438	.0437	.0438	.0439	.0439
Holland	Florin or guilder	.3643	.3637	.3630	.3649	.3655	.3656
Hungary	Krone	.001384	.001514	.001522	.001353	.001328	.001397
Italy	Lira	.0435	.0438	.0437	.0438	.0440	.0443
Norway	Krone	.1567	.1564	.1564	.1571	.1572	.1571
Poland	Polish mark	.000333	.000308	.000299	.000295	.000291	.000288
Portugal	Escuda	.0721	.0736	.0767	.0762	.0760	.0762
Rumania	Leu	.007625	.007585	.00746	.007404	.007379	.007446
Serbia	Dinar	.01368	.0138	.01372	.01346	.01323	.01314
Spain	Peseta	.1490	.1492	.1493	.1497	.1500	.1500
Sweden	Krona	.2493	.2488	.2490	.2498	.2501	.2500
Switzerland	Franc	.1943	.1941	.1942	.1946	.1945	.1945
Yugoslavia	Krone	.003419	.00345	.003331	.003331	.003281	.003275
Asia:							
China	Chefoo tael	.7833	.7775	.7700	.7788	.7792	.7796
Do	Hankow tael	.7833	.7775	.7675	.7763	.7792	.7796
Do	Shanghai tael	.7370	.7311	.7245	.7334	.7357	.7354
Do	Tientsin tael	.7883	.7825	.7725	.7804	.7833	.7838
Do	Hongkong dollar	.5468	.5451	.5467	.5475	.5484	.5458
Do	Mexican dollar	.5388	.5340	.5296	.5344	.5363	.5375
Do	Tientsin or Peiyang dollar.	.5575	.5525	.5508	.5521	.5508	.5550
Do	Yuan dollar	.5583	.5442	.5425	.5438	.5425	.5467
India	Rupee	.2758	.2770	.2770	.2778	.2764	.2762
Japan	Yen	.4747	.4744	.4743	.4749	.4748	.4756
Singapore (S. S.)	Dollar	.4817	.4792	.4800	.4800	.4750	.4817
North America:							
Canada	do	.947031	.947656	.948125	.950234	.949688	.9525
Cuba	Peso	.996462	.996462	.997085	.996878	.996878	.996878
Mexico	do	.489825	.489075	.48795	.4870	.4866	.486563
Newfoundland	Dollar	.9450	.945833	.945938	.948438	.947708	.951042
South America:							
Argentina	Peso (gold)	.7632	.7679	.7743	.7833	.7840	.7890
Brazil	Milreis	.1252	.1248	.1242	.1245	.1250	.1255
Uruguay	Peso	.7239	.7239	.7250	.7239	.7278	.7350

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(T. D. 39001.)

Drawback.

Synopsis of drawback decisions issued between January 9 and February 4, 1922, inclusive.

(A) *Alcohol.*—Manufactured by the Rossville Co., of Lawrenceburg, Ind., wholly or in part with the use of imported duty-paid molasses.

Records shall be kept in the manner described in the sworn statement of the manufacturer, dated September 21, 1921, and at the end of each period of manufacture, which shall not exceed one month, there shall be filed a certificate of manufacture and abstract from manufacturing records, showing for the period the quantity, value and identity of the imported duty-paid molasses used, the quantity and value of the alcohol and of each kind of by-product obtained, and the quantity of waste resulting, together with the value thereof, if any.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported molasses used in the manufacture of the exported alcohol as shown by the abstract from the manufacturing record, less the quantity of imported material which the value, if any, of the waste will replace, the duty paid on the quantity thus determined to be distributed to the alcohol and by-products according to their relative values, subject to the limitations of the drawback law as interpreted by the department in T. D. 33809 of October 25, 1913.

Rate effective on and after April 18, 1921.

Sworn statement dated September 21, 1921, transmitted to the collector of customs at New York, N. Y., on January 24, 1922. (105410–9.) (Signed) ELMER DOVER, *Assistant Secretary.*

(B) *Fabrics, pile.*—Manufactured by the Rossie Velvet Co., of New York, N. Y., with the use of imported yarn, either dyed or natural, or with the use of yarn imported in the natural state and dyed or otherwise processed after importation by manufacturers whose products are covered by drawback rates now existing or hereafter promulgated.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer, dated December 20, 1921, showing, in the case of each lot of pile fabric manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity of finished pile fabric obtained, and the quantity and identity of each kind of imported yarn appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry or certificate of manufacture.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported material appearing in

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the exported pile fabrics as shown by the abstract from the manufacturing record.

Rate effective on and after October 8, 1921.

Sworn statement dated December 20, 1921, transmitted to the collector of customs at New York, N. Y., on January 24, 1922. (95145–1.) (Signed) ELMER DOVER, *Assistant Secretary.*

(C) *Flour.*—Manufactured by the Sperry Flour Co., of San Francisco, Calif., at its factory at Vallejo, Calif., with the use of imported wheat.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer dated December 7, 1921, showing, in the case of each lot of flour manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, value, and identity of the imported wheat used, the quantity of domestic wheat used, if any, the quantity and value of the flour and of each kind of by-product obtained, and the quantity of waste incurred, together with its value, if any. A sworn abstract from such manufacturing record shall be filed with the drawback entry or certificate of manufacture.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported wheat used in the manufacture of the exported flour as shown by the abstract from the manufacturing record, the drawback to be distributed to the flour and by-products in accordance with their relative values, subject to the limitations of the drawback law as interpreted by the department in T. D. 33809. The quantity of flour and by-products which may be taken as a basis for the allowance of drawback shall be reduced according to the quantity of imported material which the value, if any, of the waste will replace.

Rate effective on and after October 29, 1921.

Sworn statement dated December 7, 1921, transmitted to the collector of customs at San Francisco, Calif., on January 11, 1921. (100284–11.) (Signed) ELMER DOVER, *Assistant Secretary.*

(D) *Hardener, concrete; "Lapidolith."*—Manufactured by L. Sonneborn Sons (Inc.), of New York, N. Y., at its factories at Belleville and Nutley, N. J., with the use of imported magnesium fluorsilicate.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer dated December 21, 1921, showing, in the case of each lot of chemical concrete hardener manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of the imported magnesium fluorsilicate used, the quantity of other material used, and the quantity of finished product obtained. A

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sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported magnesium fluorsilicate used in the manufacture of the exported concrete hardener as shown by the abstract from the manufacturing record.

Rate effective on and after August 13, 1921.

Sworn statement dated December 21, 1921, transmitted to the collector of customs at New York, N. Y., on January 24, 1922. (109600.) (Signed) ELMER DOVER, *Assistant Secretary.*

(E) *Medicinal preparation; "Pain killer."*—T. D. 35605 of July 23, 1915, providing for the payment of drawback on medicinal preparations manufactured by the Davis & Lawrence Co., of New York, N. Y., with the use of wholly imported or wholly domestic taxpaid alcohol, amended to provide for the filing with the drawback entry or certificate of manufacture of an abstract from the manufacturing records, showing, as to each lot of "Pain killer" manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of the domestic taxpaid alcohol or imported alcohol used, the quantity of finished product obtained and the number and size of the containers in which packed.

The drawback allowance shall not exceed the tax, or the duty less 1 per cent, paid on the quantity of alcohol used in the manufacture of the exported "Pain killer" as shown by the abstract from the manufacturing record.

Supplemental sworn statement dated December 15, 1921, transmitted to the collector of customs at New York, N. Y., on January 16, 1922. (40852.) (Signed) ELMER DOVER, *Assistant Secretary.*

(F) *Paper, carbon.*—Manufactured by the Old Town Ribbon & Carbon Co. (Inc.), of New York, N. Y., with the use of imported tissue paper.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer dated January 4, 1922, showing, in the case of each lot of carbon paper manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the number of sheets of carbon paper obtained, the dimensions and weight thereof, the number of sheets to the pound, the identity of the imported tissue paper used and the quantity of trimming waste incurred. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported tissue paper appearing in

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the exported carbon paper, as shown by the abstract from the manufacturing record, plus the quantity of trimming waste incurred where the quantity of such waste is ascertained and recorded.

Rate effective on and after November 19, 1921.

Sworn statement dated January 4, 1922, transmitted to the collector of customs at New York, N. Y., on February 3, 1922. (101733–6.) (Signed) ELMER DOVER, *Assistant Secretary.*

(G) *Stones, semiprecious, incrusted.*—Imported semiprecious stones exported by the Nathan Hyman Co., of New York, after having been engraved or incrusted with various designs.

The drawback allowance for each engraved or incrusted stone exported shall not exceed the duty paid, less 1 per cent thereof, on one imported semiprecious stone of the same kind, size, and value.

Rate effective on and after November 18, 1921.

Sworn statement dated December 16, 1921, transmitted to the collector of customs at New York, N. Y., on January 28, 1922. (99998–14.) (Signed) ELMER DOVER, *Assistant Secretary.*

(H) *Wool, pulled, washed, and graded.*—Washed and graded wool produced by the Helburn Thompson Co., of Johnstown, N. Y., for the account of Louis Meyers & Sons, of New York, N. Y., and others, from wool pulled from imported skins by Karg Bros., of Johnstown, N. Y.

Records shall be kept by the Helburn Thompson Co. and Karg Bros. in accordance with their sworn statements dated December 9 and 12, 1921, respectively, showing in the case of each lot of pulled, washed, and graded wool produced for exportation with benefit of drawback, the lot number and date of production thereof, the quantity and identity of the imported wool on skins used, and the quantity of each grade of finished wool obtained, together with the quantity of waste resulting and its value, if any. A sworn abstract from such records shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported wool on skins used in the production of the exported pulled, washed, and graded wool as shown by the abstract from the records provided for above. In cases where the entire import lot of wool is not exported the drawback shall be distributed to the several grades of wool according to their relative values.

Rate effective on and after September 17, 1921.

Sworn statements dated December 9 and 12, 1921, transmitted to the collector of customs at New York, N. Y., on January 27, 1922. (100768–6.) (Signed) ELMER DOVER, *Assistant Secretary.*

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(T. D. 39002.)

Drawback—Peanut meal.

T. D. 36877 of December 11, 1916, providing for drawback on peanut meal manufactured from imported shelled peanuts, revoked.

TREASURY DEPARTMENT, *January 31, 1922.*

SIR: The department refers to T. D. 36877 of December 11, 1916, authorizing the payment of drawback on peanut meal manufactured by the Terminal Oil Mill Co., of New Orleans, La., for the account of the Southport Mill (Ltd.), of New Orleans, La., from imported shelled peanuts.

It has recently come to the attention of the department that the peanut meal in question is produced from peanut oil cake resulting from the extraction of the peanut oil from imported shelled peanuts.

As construed by the department, paragraph O of Section IV of the tariff act requires the distribution of drawback between a principal product and a by-product according to their relative values at the time of separation and said statute specifically provides that where no duty is assessable on a corresponding by-product if imported from a foreign country, no drawback shall be allowed on the exportation of the by-product, but the entire amount of duty paid, less 1 per cent, shall be allowed on the exportation of the principal product.

The process of extracting peanut oil from imported shelled peanuts results in a principal product, peanut oil, and a by-product peanut cake. The department does not consider the peanut meal as a by-product inasmuch as it has undergone a further process of manufacture after separation from the principal product.

Inasmuch as oil cake would, if imported from a foreign country, be free of duty, the department is of the opinion that no drawback accrues to the peanut oil cake in question. T. D. 36877 is, therefore, revoked to take effect 30 days from the publication of this decision, and you are hereby directed to so notify the parties in interest.

Respectfully,

(105585.) ELMER DOVER, *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New Orleans, La.*

(T. D. 39003—G. A. 8502.)

Cellulose ester—Chemical compound.

So-called acetol, a fine white powder, is dutiable as a chemical compound at 15 per cent ad valorem under paragraph 5, tariff act of 1913, rather than as a compound of cellulose ester at 25 per cent under paragraph 25, which paragraph is held to apply only to liquid solutions and compounds in blocks, sheets, rods, tubes, or other forms. Strohmeyer *v.* United States (2 Ct. Cust. Appls., 185; T. D. 32035) followed.

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United States General Appraisers, New York, January 27, 1922.

In the matter of protest 938375 of Rhodia Chemical Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Walden & Webster (*Henry J. Webster* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Harry M. Farrell*, special attorney), for the United States.

Before Board 1 (McCLELLAND, SULLIVAN, and BROWN, General Appraisers).

SULLIVAN, General Appraiser: The merchandise in question is shown by the testimony to be a cellulose ester in its imported condition. It is described on the invoice as acetol (acetate de cellulose). The official sample of the merchandise is a fine white powder.

It was returned for duty at 25 per cent ad valorem under paragraph 25, act of 1913, which is the rate applicable to—

* * * *compounds* of pyroxylin or *of* other *cellulose esters*, whether known as celluloid or by any other name, if in blocks, sheets, rods, tubes, *or other forms* not polished, wholly or partly, and not made into finished or partly finished articles, 25 per centum ad valorem; * * * (Italics ours.)

The protest reads, as far as pertinent:

Protest is hereby made against your decision as to the rate or amount of duties on acetate of cellulose, assessed by you or returned by the appraiser at 25% and covered by entries below named. The reasons for objection, under the Tariff Act of October 3rd, 1913, are that said merchandise is dutiable at 15% ad valorem under paragraph 5, or at the same rate under the first clause of paragraph 25, by virtue of par. 386, or at the same rate under par. 385.

Paragraph 5 is—

5. Alkalies, alkaloids, and all chemical and medicinal compounds, preparations, mixtures and salts, and combinations thereof not specially provided for in this section, 15 per centum ad valorem.

The first clause of paragraph 25 reads:

25. Collodion and all other *liquid solutions* of pyroxylin, or of other cellulose esters, or of cellulose, 15 per centum ad valorem; * * * (Italics ours.)

Paragraph 386 is the similitude paragraph, and the provision in paragraph 385 claimed under is that for nonenumerated manufactured articles.

The testimony of Dr. Max Mueller, the single witness testifying on behalf of the protestant, is to the effect that as imported this merchandise is a cellulose ester, and it is neither a compound of a cellulose ester with anything else nor a compound of pyroxylin with anything else. He testified—

The article is put to a number of uses. It is used for the manufacture of celluloid to take the place of nitrocellulose, also the cellulose ester, to produce less inflammable celluloid, in some cases entirely noninflammable celluloid, through admixture with other ingredients which facilitate the making it noninflammable.

* * * * * * *

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Q. How would you describe that article, as a powder or crystal or flakes, or give us a description?—A. Well, I would describe this article as amorphous, from a chemical point of view. * * * That is a powder; it is not crystalline; has no form whatever; it may be compared with pitched up cellulose or wood stock or cotton.

Q. When this is used for various purposes, is it first made into a solution with some solvent added?—A. Yes.

Q. Is that always the case?—A. Not necessarily. It does not, in many cases, like in the case of celluloid, have to go into solution. It can be made into a gelatinous mass without going into solution * * * with certain solvents which merely place it into a more dilute form, without really effecting solution.

Q. Is it ever used simply in the dry condition by mixing it with something dry?—A. No.

Q. Is it an acid?—A. No; it is not an acid.

On cross-examination he testified that he would define a cellulose ester as the chemical combination of an acid with alcohol, or with compounds containing alcoholic groups, and that the merchandise in question is a combination of an acid with alcohol.

Q. What is the first step in producing merchandise like that covered by this shipment?—A. The first step in producing a cellulose acetate is the hydration of cellulose into cellulose hydrate.

Q. Would you have a cellulose ester then?—A. No, not yet; you simply have the hydride of cellulose, but when placed in contact with acetic acid under certain conditions, it produces the ester, which is the cellulose acetate, which is this product here.

* * * * * * *

Q. There is a catalytic agent used in order to make merchandise like this covered here?—A. Yes, it is my belief it is used.

Q. That makes a compound, does it not?—A. Yes.

* * * * * * *

Q. And that compound, I understand, is cellulose ester?—A. Yes, sir.

It will be noticed that the first part of paragraph 25 has reference to "Collodion and all other liquid solutions of pyroxylin, or of other cellulose esters, or of cellulose." Evidently this portion of the paragraph refers to liquid solutions, for the words "all other liquid solutions of pyroxylin" are followed by "or of other cellulose esters, or of cellulose," which indicate that the meaning intended is as though the paragraph were written "Collodion and all other liquid solutions of pyroxylin, or" liquid solutions "of other cellulose esters, or" liquid solutions "of cellulose." Therefore this merchandise would not fall under that portion of paragraph 25, even by virtue of the similitude clause in paragraph 386, for, being a powder, it is entirely unlike a liquid in texture, and there is nothing in the record to show that it is similar either in material, quality, or the use to which it is applied, to liquid solutions of cellulose esters.

The second part of paragraph 25 provides for "compounds of pyroxylin or of other cellulose esters, whether known as celluloid or by any other name, if in blocks, sheets, rods, tubes, or other forms not polished, wholly or partly, and not made into finished or partly finished articles." A mere inspection of the sample convinces us that it can not fall under that portion of the paragraph, for it is not

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"in blocks, sheets, rods, tubes," nor has it any form, being an amorphous powder; nor is it a finished or partly finished article, but merely a material out of which articles may be manufactured.

Does it fall within paragraph 5? The witness testified: "The article is a chemical compound obtained by the action of acetic anhydride upon cellulose." Paragraph 5 provides for chemical compounds, not specially provided for.

The Court of Customs Appeals gives the following definition of "chemical compound:"

> * * * a chemical compound necessarily implies not a mere mingling of components but a chemical combination of them, resulting in their destruction as distinct entities and in the development by chemical reaction of a new substance possessing properties radically different from those of its constituent elements.—Strohmeyer *v.* United States (2 Ct. Cust. Appls., 285, 287; T. D. 32035).

It seems to us from this legal definition of a chemical compound, and the fact that it is undisputedly such by the testimony, that it falls under paragraph 5, and is dutiable thereunder at 15 per cent ad valorem. We so hold.

The protest is sustained.

(T. D. 39004—G. A. 8503.)

Shortage.

1. Satisfactory and undisputed evidence showing the landing and discharge at the dock of 80 dozen pairs of gloves out of 100 dozen pairs of gloves and subsequent finding of a smaller number, with cases in bad order, with suggestion, by the appraiser, of robbery at the appraiser's stores, to which in the meantime the merchandise had been transported by a bonded drayman, not sworn on the hearing, presents no inconsistency between the two statements of fact at different places and at different dates. The discrepancy in figures is possibly explained by the suggestion of robbery in the absence of drayman's testimony.

2. Duty attached to 80 dozen pairs of gloves when landed, and was properly assessed, notwithstanding the subsequent report of additional shortage when examined in bad order after unexplained conveyance to a different place and on a later date.

United States General Appraisers, New York, February 2, 1922.

In the matter of protest 941633 of Genung, McArdle & Leeney (Inc.), against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

William A. McIlrath for the importer.

William W. Hoppin, Assistant Attorney General (*John J. Mulvaney*, special attorney), for the United States.

Before Board 3 (Waite, Hay, and Adamson, General Appraisers; Hay, G. A., not participating.)

Adamson, General Appraiser: In this case the matter in dispute consists of 11.9 dozen pairs of gloves. From the papers, reports, and other evidence on the hearing it is clear and undisputed that when the ship landed which conveyed the merchandise to this country the dis-

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charging inspector on the dock examined the merchandise, counted it item by item, and found 80 dozen pairs of gloves in the lot invoiced as 100 dozen pairs. Subsequently the merchandise was conveyed by a bonded drayman to the appraisers' stores where they were again examined. The lapse of time is not very clear, but the dates of the entry and the report of the appraiser show a lapse of several days' time.

When the appraiser examined the merchandise, he found 31.9 dozen short, which was 11.9 dozen pairs short more than were found by the discharging inspector. The appraiser so reported and, describing the packages in bad order, suggested that the loss was caused by robbery.

The collector allowed for the shortage of 20 dozen pairs of gloves, according to the detailed and itemized examination and report of the discharging inspector, taking duty on the 80 dozen pairs of gloves which were landed and on which the duty immediately attached.

The only paper in the nature of a protest sent to this board is a letter written by the importer to the collector asking why the 11.9 dozen were not allowed. As the Government made no point on the validity of the protest, we accept it as good, but we find no inconsistency between the state of facts existing at the time of landing and the state of facts reported by the appraiser. There is a discrepancy between the figures found at the two different places and dates, but even that discrepancy is explained by the suggestion of robbery and the difference in time and distance during which the goods were in the custody of the bonded drayman, who did not testify on the trial.

As it is evident that the merchandise in dispute was landed in this country, the protest is overruled.

(T. D. 39005—G. A. 8504.)

Emergency tariff act

DATE WHEN RATE OF DUTY IS DETERMINED.

Merchandise upon which the rate of duty provided by the tariff act of 1913 is changed by the so-called emergency tariff act which became effective on the 28th day of May, 1921, wnich arrived at a port of entry in the United States on the 27th day of May, 1921, but was not entered and liquidated until after the 28th of May, the day upon which the emergency tariff became effective, is dutiable under the latter act; following Vandergrift & Co.'s case, G. A. 8131 (T. D. 37510), affirmed in 9 Ct. Cust. Appls., 112 (T. D. 37978).

United States General Appraisers, New York, February 2, 1922.

In the matter of protest 939942 of F. J. Constance against the assessment of duty by the collector of customs at the port of Ogdensburg.

[Affirmed.]

F. W. Myers and *Strauss & Hedges* for the importer.

William W. Hoppin, Assistant Attorney General (*Samuel Isenschmid* and *John J. Mulvaney*, special attorneys), for the United States.

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Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers).

HAY, General Appraiser: The protestant in this case imported into the United States 72 calves from Canada. They arrived at the port of Cape Vincent, N. Y., on the 27th day of May, 1921. They were apparently not entered until May 30, 1921, and the entry was liquidated on June 15, 1921. It is difficult, if not impossible, to determine from the record before us when a permit of delivery was issued, if at all, and the testimony is a little vague and uncertain with reference to the entry of the merchandise, but the entry bears date of May 30.

Duty was assessed at 30 per cent under paragraph 12 of the emergency tariff act of May 27, 1921. The protestant contends that the calves should have been admitted free of duty under the provisions of paragraph 619 of the act of 1913. The sole question, therefore, for determination is under which of the acts was the merchandise dutiable. The so-called emergency tariff act was passed and approved on the 27th day of May, 1921, and provided in the enacting clause "that on and after the day following the passage of this act, for the period of six months, there shall be levied, collected, and paid upon the following articles when imported from any foreign country into the United States, * * * the rates of duty which are prescribed by this section, namely, * * * ." Under the operation of that provision this so-called emergency tariff act went into effect on the 28th day of May, 1921.

This narrows the question presented by the facts of this case down to one as to whether the law in force at the time the merchandise arrived in the United States, or at the time it was entered and the importer entitled to the possession of it, is the law under which duty should be assessed. The general tariff law of 1909 and that of 1913 made very definite and specific provision as to when they should become operative upon imported merchandise. The law we are now called upon to construe does not do this, but is apparently very similar in language and we think identical in meaning with Title V, section 500, of the law of September 8, 1916, which changed and altered the duty upon certain chemicals, and we think the construction placed upon it by the decision of this board in Vandergrift & Co.'s case, G. A. 8131 (T. D. 37510), must control the question here under consideration. In that case, after reviewing the authorities upon the general subject, we said: "We conclude that the importation of the merchandise in question was not completed, so that any definite duties attached thereto until the liquidation of September 16, 1916." That case was affirmed by the Court of Customs Appeals (9 Ct. Cust. Appls., 112; T. D. 37978). Following that case we are of the opinion that the action of the collector in the case at bar in

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assessing duty under the provisions of law in force at the time the merchandise was entered and liquidated was correct, and the protest must be and is overruled.

(T. D. 39006—G. A. 8505.)

Ginseng.

Certain ginseng root submitted to a slight treatment with honey and sugar largely of a preservative nature and to keep its original appearance used to make into a medicine in the same way that ginseng not so treated is used, *held* on the meager testimony concerning the process to be dutiable at 10 per cent under paragraph 27 and not classifiable under paragraph 17, 5, or 477.

United States General Appraisers, New York, February 3, 1922.

In the matter of protest 935376 of Dan Sang Tong against the assessment of duty by the collector of customs at the port of San Francisco.

[Reversed.]

Frank L. Lawrence for the importer.

William W. Hoppin, Assistant Attorney General (*Samuel Isenschmid* and *Pelham St. George Bissell*, special attorneys), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Brown, General Appraiser: The merchandise involved in this case is ginseng. It was classified by the collector at the port of San Francisco at 20 per cent ad valorem under paragraph 17, act of 1913, reading:

Chemical and medicinal compounds, combinations and all similar articles dutiable under this section, except soap, whether specially provided for or not, put up in individual packages of two and one-half pounds or less gross weight (except samples without commercial value), shall be dutiable at a rate not less than 20 per centum ad valorem: *Provided*, That chemicals, drugs, medicinal and similar substances, whether dutiable or free, imported in capsules, pills, tablets, lozenges, troches, ampoules, jubes, or similar forms, shall be dutiable at not less than 25 per centum ad valorem.

The importer contends for a refund on the ground that it should be classified either as a crude drug under paragraph 477 or at 10 per cent as a drug advanced in value under paragraph 27.

Paragraph 477 after enumerating a list of substances called drugs concludes in these words—

any of the foregoing which are natural and uncompounded drugs and not edible and not specially provided for in this section, and are in a crude state, not advanced in value or condition by shredding, grinding, cnipping, crushing, or any other process or treatment whatever beyond that essential to the proper packing of the drugs and the prevention of decay or deterioration pending manufacture.

The packages in which the merchandise was imported are in 2½ pounds gross weight, but the evidence shows that it has to be either sliced or ground before it can be used as a medicine.

The ginseng root is collected in the north of China and shipped to the south of China and from thence sometimes shipped as it stands

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and sometimes, as in this case, it is treated with honey and sugar. The fact that it has to be ground and sliced and generally mixed with other things before being used as a medicine seems to take it clearly out of paragraph 17, and as the treatment with honey and sugar can hardly be called a mixture or compound it would also go out of paragraph 17 under the case of Monticelli *v.* United States (8 Ct. Cust. Appls., 21; T. D. 37162), and the same reasoning would keep it out of paragraph 5. The testimony shows that in itself it is not a complete medicine.

The question remains as to whether as a drug it comes under paragraph 477 or has been sufficiently advanced to come under paragraph 27.

The process, the details of which are not altogether easy to gather from the testimony of Chinamen produced, seems to be largely preservative, to make the root keep its original appearance. It is imported with and without the process for identical uses.

The question is a close one not free from difficulty, but on the record as presented we are inclined to think that even the comparatively slight process here used, in the absence of further evidence, must be held to have removed this particular ginseng from the crude state, and so holding we sustain the alternative claim in the protest for assessment under paragraph 27 at 10 per cent ad valorem.

(T. D. 39007.)

Reduction of duties—Title V, act of September 8, 1916.

Date on which first reduction of 20 per cent of duty provided for in Title V, Group III, section 501, act of September 8, 1916, becomes effective.

TREASURY DEPARTMENT, *February 9, 1922.*

SIR: The department is in receipt of a letter from Mr. G. C. Davis, former special agent in charge at your port, in regard to the date on which the first reduction of 20 per cent of the specific duties provided for in the first part of the second paragraph of section 501, Group III, Title V of the act of September 8, 1916, became effective. The first paragraph of section 501 and that part of the second paragraph referred to are as follows:

SEC. 501. That on and after the day following the passage of this Act, in addition to the duties provided in section five hundred, there shall be levied, collected, and paid upon all articles contained in Group II a special duty of 2½ cents per pound, and upon all articles contained in Group III (except natural and synthetic alizarin, and dyes obtained from alizarin, anthracene, and carbazol; natural and synthetic indigo and all indigoids, whether or not obtained from indigo; and medicinals and flavors), a special duty of 5 cents per pound.

During the period of five years beginning five years after the passage of this Act such special duties shall be annually reduced by twenty per centum of the rate imposed by this section, so that at the end of such period such special duties shall no longer be assessed, levied, or collected; * * *.

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It appears that you have construed the language of that part of the second paragraph quoted above to mean that the first reduction of 20 per cent became effective five years after the passage of the act, namely, on September 8, 1921, while the collectors of customs at the ports of Boston and Philadelphia have construed it to mean that the first reduction of duty does not become effective until September 8, 1922; that is, six years after the passage of the act.

If your construction is followed the final 20 per cent reduction of duty will become effective nine years after the passage of the act. (Reduction at the end of fifth year 20 per cent, sixth year 40 per cent, seventh year 60 per cent, eighth year 80 per cent, and ninth year 100 per cent.)

If the construction of the collectors at Boston and Philadelphia is followed the final 20 per cent reduction of duty will be in effect 10 years after the passage of the act. (Reduction at the end of the sixth year 20 per cent, seventh year 40 per cent, eighth year 60 per cent, ninth year 80 per cent, and tenth year 100 per cent.)

In view of this difference in practice at the ports named you will continue to assess specific duties at the rates of 2½ cents per pound and 5 cents per pound under the provisions of the said paragraph until September 9, 1922, leaving importers to their remedy by protest under the provisions of paragraph N, Section III of the act of October 3, 1913.

Respectfully, ELMER DOVER,
(104297.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 39008.)

Wrist and fob watches.

Appeal directed from decision of the Board of United States General Appraisers, T. D. 38943 (G. A. 8489), dated December 12, 1921, holding certain wrist and fob watch cases, which were classified as jewelry, dutiable at the rate of 60 per cent ad valorem under paragraph 356, to be dutiable at 30 per cent ad valorem under paragraph 161 and at 50 per cent ad valorem under paragraph 167, tariff act of 1913.

TREASURY DEPARTMENT, *February 10, 1922.*

SIR: The department is in receipt of your letter of the 7th instant, inviting attention to a decision of the Board of United States General Appraisers, dated December 12, 1921, T. D. 38943 (G. A. 8489) in which the board held that cases of certain wrist and fob watches, which had been classified as jewelry, dutiable at the rate of 60 per cent ad valorem under paragraph 356, were dutiable at the rate of 30 per cent ad valorem under paragraph 161 or at 50 per cent ad valorem under paragraph 167 of the tariff act of October 3, 1913.

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In accordance with your recommendation, you are hereby requested to file in the name of the Secretary of the Treasury an application with the United States Court of Customs Appeals for a review of the said decision in conformity with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, EDWARD CLIFFORD,
(84072.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 39009—G. A. 8506.)

Bottles printed in any manner.

Glass bottles having on the bottoms thereof a crest and the words "Made in Bohemia" obscurely etched or printed thereon in such a manner as hardly to be noticeable, are "Glass bottles * * * decorated in *any* manner, * * * or printed in *any* manner," and are dutiable as such under paragraph 84, tariff act of 1913. They are not dutiable as plain bottles under paragraph 83. Texas & Pacific Railway Co. *v.* United States (7 Ct. Cust. Appls., 328; T. D. 36875) distinguished.

United States General Appraisers, New York, February 7, 1922.

In the matter of protests 939663, etc., of A. H. Ringk & Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Strauss & Hedges (*J. L. Klingaman* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers).

SULLIVAN, General Appraiser: The official samples of the merchandise in question consist of glass bottles. On the side of some of the samples (Exhibit 1) appear the following words etched on the surface of the bottles "Greater N. Y. Bott. Co., Bridgeport, Conn." These words are arranged around the inside of an ellipse, also etched on the surface of the bottle. In the center of the ellipse, surrounded by the above-quoted words are the initials "J. K." in monogram form with the "J" superimposed on the "K." At the bottom of the ellipse are the words "Capacity 25 oz." The other bottles (Exhibit 2) are almost entirely of plain glass with the exception that at the bottom, so obscurely etched on the glass as to be hardly noticeable, appear the words "Made in Bohemia" below a crest. It appears from the testimony that the words on the sides of the bottles (Exhibit 1) were placed thereon after importation, and the bottles so marked were entirely plain when imported.

The question is whether these bottles are dutiable, as classified by the collector, as glass bottles printed and decorated, at 45 per cent ad valorem under paragraph 84, act of 1913, or, as claimed in the

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protests, as plain glass bottles at 30 per cent ad valorem under paragraph 83 of the same act.

It will be observed that paragraph 84 provides, among other things, for "glass bottles * * * ornamented or decorated in *any* manner, or * * * printed in *any* manner."

It appears from the testimony the bottles claimed on appear on the invoice with protest 939996 as 26 barrels of siphons, American type; also on the invoice with entry 8920, covered by protest 939663, and on the invoice with entry 14534, protest 939663.

The witness testified he examined the bottles in the following casks, 435/6/7, 445, 447, 449, 450/1/2, 460/1, 470/1/2, and that he took out some of the bottles therefrom; that "All bottles that I took from every one of those 14 cases were without any crest at all." They had "no marks whatever." These bottles were from the shipment by the *Mar Blanco*, entry 14534, protest 939663.

Another witness testified that he was with the first witness when the 14 casks above mentioned were examined, and that about 60 per cent of the bottles examined in those 14 cases were perfectly plain, and 40 per cent otherwise.

The examiner who passed the merchandise, testifying on behalf of the Government, stated he drew two samples of the merchandise, marked in evidence respectively "Ill. Ex. A" and "Ill. Ex. B," and both had the crest, consisting of "a sort of lion standing on one hind leg with a crown on the head with the words 'Made in Bohemia'" underneath. He testified that in his opinion the printing in question neither added anything to the value of the bottles, nor increased their usefulness. He also produced a third sample (Exhibit C) with the crest and words "Made in Bohemia" so obscure as not to be noticeable on a casual glance. He further testified he did not think the printing tended to beautify the bottles, nor would he call it an ornamentation or decoration. On cross-examination he testified: "I would call it printing." The merchandise, he stated, consisted of siphon bottles, and that they were not all marked or printed. He testified that prior to about two or three years ago "Those bottles have been returned with similar printing on to it as plain bottles."

The witness for the Government further testified that the crest was cut into the bottles. Further in his testimony he stated that it was probably put on with an acid stain.

An examination of the bottles does not satisfy us that the crest is cut into the bottle, yet it is permanent. "Made in Bohemia," together with the crest, are both a species of printing.

The protestants in their brief rely upon the case of Texas & Pacific Railway Co. *v.* United States (7 Ct. Cust. Appls., 328; T. D. 36875). The merchandise in that case consisted of so-called patches for

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cotton. They were pieces of woven fabric composed of jute, about a yard square, intended for use in patching torn cotton bales. The question was whether they were dutiable under the provision for all manufactures of jute, not specially provided for, under paragraph 284 of the act of 1913, or free of duty under the provision of paragraph 408, for "Bagging for cotton, * * * suitable for covering cotton, composed of single yarns made of jute * * *, or other material *not* bleached, dyed, colored, stained, painted, or *printed*." The court held that while it was true the consignee's name was conspicuously stenciled upon each piece for purposes of identification only, this fact did not bring the fabrics within the description of printed fabrics as used in the act. The court said:

> That term (printed), like its associate terms, bleached, dyed, colored, stained, or painted, applies only to such printing as affects the character or condition of the woven fabrics as such, whether by way of ornamentation or exploitation, or for other like purpose. The stenciling of the consignee's name upon the fabric for purposes of identification only is partial and temporary in character, and does not alter their real description for tariff purposes.

That case is not applicable to the question here involved. As stated therein, the term "printed" as used in paragraph 408, applies only to such printing as affects the character or condition of the woven fabrics.

Printing is not a dominant feature of paragraph 408. The paragraph states "or other material not bleached, dyed, colored, stained, painted, or printed." The printing would necessarily have to be a substantial element to give it predominance. In the Texas case, supra, it was merely stenciling, and this is not such printing as is necessary to change a classification.

The statute in question provides in clear and concise terms for "glass bottles * * * ornamented or decorated in *any* manner, or cut, * * * etched, * * * or printed in *any* manner, * * *." Unquestionably Congress had something in mind when it stated "printed in *any* manner." The evidence in the case at bar clearly illustrates the significance of the crest and the words "Made in Bohemia." They are to distinguish the merchandise in question from that which is plain. Admittedly they are not a decoration. They are placed there for some purpose, viz, to give some significance to the merchandise, not from a material sense, but to give it some qualification, to those who may use it, different from the plain article.

The cases cited by the Government in its brief do not assist us in arriving at a conclusion. In the Bush case, Abstract 40751 (32 Treas. Dec., 784), testimony was not offered to sustain the claim of the protestants that the bottles were dutiable as plain bottles under paragraph 83, and the classification of the collector as glass bottles printed in any manner under paragraph 84 was affirmed.

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A protest decided on default does not aid us in arriving at a conclusion as to the meaning of the words "printed in any manner."

The language "printed in *any* manner" can not be considered superfluous. It has a meaning, which can not be overlooked. It takes the merchandise in question out of paragraph 83 and places it in paragraph 84.

It seems to us, therefore, that the collector was correct in his classification of the bottles with a crest and the words "Made in Bohemia" etched thereon, and we so hold; but he was evidently mistaken in his classification of the plain bottles under paragraph 84.

Protest 939663 is sustained as to 60 per cent of the bottles in question covered by entry 14534, casks 435/6/7, 445, 447, 449, 450/1/2, 460/1, 470/1/2, the same being without printing or decoration. It is overruled in all other respects. Protest 939996 is overruled.

(T. D. 39010.)

Foreign currencies—Rates of exchange.

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), emergency tariff act of May 27, 1921.

TREASURY DEPARTMENT, *February 13, 1922.*

To Collectors of Customs and Others Concerned:

The appended tables of the values of certain foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), act of May 27, 1921, during the period from January 27 to February 9, 1922, both inclusive, are published for the information of collectors of customs and others concerned.

(103512.) ELMER DOVER, *Assistant Secretary.*

Values of foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), emergency tariff act of May 27, 1921.

PERIOD JANUARY 27 TO FEBRUARY 2, 1922, INCLUSIVE.

Country.	Name of currency.	Jan. 27.	Jan. 28.	Jan. 30.	Jan. 31.	Feb. 1.	Feb. 2.
Europe:							
Austria	Krone	$0.000294	$0.000292	$0.000314	$0.000352	$0.000309	$0.000308
Belgium	Franc	.0783	.0784	.0790	.0792	.0795	.0796
Bulgaria	Lev	.006957	.007029	.00695	.00695	.007042	.007083
Czechoslovakia	Krone	.019294	.019416	.019306	.019469	.018613	.018484
Denmark	do	.1996	.1996	.2004	.2019	.2019	.2029
England	Pound sterling	4.2396	4.2486	4.2646	4.2767	4.2878	4.2980
Finland	Markka	.018871	.019817	.0199	.020136	.020129	.020014
France	Franc	.0818	.0820	.0828	.0831	.0835	.0836
Germany	Reichsmark	.004963	.004991	.004991	.004958	.004914	.004885
Greece	Drachma	.0440	.0440	.0441	.0444	.0442	.0443
Holland	Florin or guilder	.3662	.3672	.3681	.3694	.3699	.3701
Hungary	Krone	.001427	.001431	.001509	.001522	.001467	.001425
Italy	Lira	.0442	.0447	.0454	.0459	.0466	.0465
Norway	Krone	.1568	.1570	.1580	.1587	.1587	.1591
Poland	Polish mark	.000303	.000296	.000306	.0003	.000305	.000307
Portugal	Escuda	.0766	.0781	.0771	.0771	.0769	.0749
Rumania	Leu	.007375	.0074	.007396	.007504	.007442	.007442
Serbia	Dinar	.01329	.013225	.01322	.01332	.01325	.013183

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Values of foreign currencies, etc.—Continued.

PERIOD JANUARY 27 TO FEBRUARY 2, 1922, INCLUSIVE—continued.

Country.	Name of currency.	Jan. 27.	Jan. 28.	Jan. 30.	Jan. 31.	Feb. 1.	Feb. 2.
Europe—Cont.							
Spain	Peseta	$0.1504	$0.1507	$0.1512	$0.1518	$0.1520	$0.1527
Sweden	Krona	.2504	.2511	.2523	.2542	.2544	.2550
Switzerland	Franc	.1948	.1952	.1951	.1950	.1949	.1960
Yugoslavia	Krone	.003294	.003281	.0033	.003322	.003314	.003282
Asia:							
China	Chefoo tael	.7796	.7850	.7850	.7883	.7858	.7867
Do	Hankow tael	.7796	.7850	.7850	.7883	.7858	.7867
Do	Shanghai tael	.7382	.7404	.7408	.7428	.7424	.7418
Do	Tientsin tael	.7829	.7900	.7892	.7917	.7892	.7900
Do	Hongkong dollar	.5494	.5475	.5454	.5503	.5529	.5505
Do	Mexican dollar	.5358	.5370	.5377	.5389	.5422	.5415
Do	Tientsin or Peiyang dollar.	.5542	.5475	.5550	.5542	.5583	.5508
Do	Yuan dollar	.5458	.5496	.5458	.5508	.5600	.5533
India	Rupee	.2766	.2769	.2784	.2786	.2774	.2784
Japan	Yen	.4749	.4750	.4749	.4750	.4735	.4733
Singapore (S. S.)	Dollar	.4817	.4817	.4817	.4829	.4858	.4800
North America:							
Canada	do	.952813	.954375	9550	.956641	.956406	.955938
Cuba	Peso	.997085	.997085	.997188	.997501	.997501	.997918
Mexico	do	.4871	.4868	.4863	.48675	.4870	.486725
Newfoundland	Dollar	.951458	.952292	.953125	.954896	.954375	.95375
South America:							
Argentina	Peso (gold)	.8010	.8231	.8308	.8212	.8105	.8099
Brazil	Milreis	.1256	.1259	.1261	.1263	.1261	.1266
Uruguay	Peso	.7431	.7582	.7642	.7617	.7561	.7571

PERIOD FEBRUARY 3 TO 9, 1922, INCLUSIVE.

Country.	Name of currency.	Feb. 3.	Feb. 4.	Feb. 6.	Feb. 7.	Feb. 8.	Feb. 9.
Europe:							
Austria	Krone	$0.000305	$0.000313	$0.000317	$0.000314	$0.000336	$0.000336
Belgium	Franc	.0796	.0802	.0801	.0808	.0817	.0826
Bulgaria	Lev	.006992	.00695	.0069	.006933	.006929	.006967
Czechoslovakia	Krone	.019078	.010316	.019003	.018881	.018963	.019038
Denmark	do	.2029	.2039	.2041	.2040	.2045	.2061
England	Pound sterling	4.3015	4.3253	4.3199	4.3440	4.3607	4.3703
Finland	Markka	.019993	.020014	.019857	.0199	.019971	.019957
France	Franc	.0833	.0838	.0837	.0846	.0855	.0864
Germany	Reichsmark	.004886	.004994	.004910	.004969	.005059	.005207
Greece	Drachma	.0445	.0447	.0448	.0449	.0448	.0450
Holland	Florin or guilder	.3705	.3724	.3717	.3729	.3739	.3739
Hungary	Krone	.001497	.001514	.001503	.001531	.001541	.001556
Italy	Lira	.0464	.0468	.0466	.0477	.0489	.0495
Norway	Krone	.1600	.1620	.1617	.1634	.1651	.1663
Poland	Polish mark	.0003	.000304	.000309	.000310	.000309	.000305
Portugal	Escuda	.0736	.0753	.0756	.0758	.0757	.0754
Rumania	Leu	.008233	.007942	.007950	.007879	.007871	.00815
Serbia	Dinar	.013058	.013167	.0131	.013167	.013196	.0133
Spain	Peseta	.1527	.1537	.1537	.1549	.1567	.1588
Sweden	Krona	.2552	.2570	.2573	.2592	.2608	.2617
Switzerland	Franc	.1953	.1960	.1959	.1955	.1951	.1945
Yugoslavia	Krone	.003252	.003289	.003271	.003271	.003314	.003316
Asia:							
China	Chefoo tael	.7883	.7875	.7742	.7775	.7692	.7708
Do	Hankow tael	.7883	.7875	.7742	.7775	.7692	.7708
Do	Shanghai tael	.7399	.7379	.7305	.7288	.7279	.7289
Do	Tientsin tael	.7933	.7908	.7775	.7817	.7742	.7675
Do	Hongkong dollar	.5502	.5482	.5495	.5443	.5429	.5419
Do	Mexican dollar	.5425	.5346	.5356	.5325	.5310	.5330
Do	Tientsin or Peiyang dollar.	.5500	.5508	.5517	.5533	.5492	.5483
Do	Yuan dollar	.5450	.5442	.5483	.5500	.5408	.5425
India	Rupee	.2787	.2808	.2821	.2827	.2844	.2842
Japan	Yen	.4740	.4740	.4749	.4744	.4742	.4738
Singapore (S. S.)	Dollar	.4783	.4808	.4883	.4883	.4883	.4958
North America:							
Canada	do	.955938	.95625	.955547	.956016	.956328	.955938
Cuba	Peso	.997917	.99875	.99875	.998542	.99875	.998542
Mexico	do	.48675	.486625	.48675	.48675	.486875	.48625
Newfoundland	Dollar	.955542	.954375	.954438	.953854	.954479	.953958
South America:							
Argentina	Peso (gold)	.8100	.8064	.8080	.8115	.8152	.8251
Brazil	Milreis	.1274	.1282	.1289	.1295	.1320	.1350
Uruguay	Peso	.7572	.7640	.7654	.7665	.7696	.7738

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(T. D. 39011.)

[Omitted from this edition.]

(T. D. 39012.)

Fines against Shipping Board vessels.

Certain vessels owned by the United States Shipping Board Emergency Fleet Corporation not to be libeled for violation of the customs revenue laws.

TREASURY DEPARTMENT, *February 16, 1922.*

To Collectors of Customs:

Under the provisions of section 3088, Revised Statutes, a vessel is liable for the payment of any penalty incurred by it or the master or owner thereof for violation of the revenue laws of the United States. By the provisions of the act of Congress approved February 8, 1881 (21 Stat., 321), section 3088, Revised Statutes, was amended so as to make the vessel liable, when used as a common carrier, only where the master or owner thereof at the time of the illegal act is a consenting party or privy thereto.

A number of cases have come to the attention of the department in which a vessel liable, by virtue of the provisions of section 3088, Revised Statutes, as amended by the act of February 8, 1881, for a penalty incurred by the master under section 2809 or section 2873, Revised Statutes, was owned by the United States Shipping Board Emergency Fleet Corporation and operated by a private shipping concern. The department has been advised by the United States Shipping Board Emergency Fleet Corporation that the greater part of its vessels allocated to private shipping concerns are operated under what is known as "Managing and operating agreement No. 4." Under the terms of this agreement any penalty for which a vessel is liable which is collected from the operator would ultimately be paid by the owner, the Shipping Board.

It would be futile for one Government department to collect a penalty from another, and therefore where a vessel owned by the United States Shipping Board Emergency Fleet Corporation and operated by a private concern under the managing and operating agreement No. 4 becomes liable for the payment of a penalty incurred for violation of the customs revenue laws, clearance of the vessel shall not be withheld nor shall any proceedings be taken against the vessel itself looking to the enforcement of such liability.

This exemption does not apply to vessels placed by the United States Shipping Board Emergency Fleet Corporation with private concerns under "bare-boat" charters, and shall not in any way be construed so as to relieve the masters of such vessels or other persons incurring such penalties from personal liability for the payment thereof.

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With a view to securing the cooperation of the Shipping Board in the prevention of violations of the customs revenue laws by the officers and crews of vessels under its control, you will report promptly to the department all cases of violation of such laws involving Shipping Board vessels in which in your opinion the master or other officer is implicated or is grossly negligent in endeavoring to prevent it, stating fully the facts upon which your opinion is based.

(92883.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39013.)

Submission of protests—Customs Regulations amended.

Article 649, Customs Regulations 1915, as amended by T. D. 38869 of October 8, 1921, modified.

TREASURY DEPARTMENT, *February 18, 1922.*

To Collectors and Other Officers of the Customs:

It has been brought to the attention of the department that article 649 of the Customs Regulations of 1915, as amended in T. D. 38869 of October 8, 1921, requiring collectors of customs to furnish a statement as to "the rate of assessment claimed," imposes unnecessary work upon collectors since the rate of assessment claimed is set forth in the protest itself.

Article 649, Customs Regulations of 1915, as amended by T. D. 38869, is therefore hereby modified to read as follows:

The collector in his letter of transmittal shall furnish a statement showing the rate imposed or assessment made, a specific description of the character of the merchandise, and the reasons which governed him in the assessment of the duty.

(109757.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39014.)

White phosphorus matches.

Foreign certificates of inspection for matches manufactured in Finland to be waived.

TREASURY DEPARTMENT, *February 18, 1922.*

To Collectors and Other Officers of the Customs:

The department has received from the Secretary of State a copy of a law given at Helsengfors, Finland, dated November 13, 1872, effective January 1, 1874, and an amendment thereto dated October 7, 1921, which prohibits the importation, manufacture, and sale of matches with white (yellow) phosphorus in Finland.

The department in view thereof is satisfied that matches imported from Finland may be admitted into the United States without production of the official certificate of inspection required in T. D. 32975, provided all other requirements of the regulations are complied with

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on entry, and the appraiser shall state that the matches entered were found on examination not to be white phosphorus matches. The production of such certificates upon the entry of matches manufactured in Finland will therefore be waived.

(92655–17.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39015—G. A. 8507.)

Folding pocket scissors.

Folding pocket scissors (with or without flimsy imitation leather cases, which are of minor value), valued above 20 cents per dozen pieces, are dutiable as metal articles above that value designed to be worn on apparel or carried on or about or attached to the person, like the articles enumerated in paragraph 356, at 60 per cent ad valorem under such paragraph, rather than as scissors under paragraph 128 at 30 per cent ad valorem. (Bischoff *v.* United States, 7 Ct. Cust. Appls., 138; T. D. 36458; Woolworth's case, G. A. 8437, 39 Treas. Dec., 332; Gallagher *v.* United States, 6 Ct. Cust. Appls., 105; T. D. 35343; United States *v.* Gluck, 8 Ct. Cust. Appls., 11; T. D. 37160; Cohn *v.* United States, 4 Ct. Cust. Appls., 378, T. D. 33536; cited and followed.)

United States General Appraisers, New York, February 14, 1922.

In the matter of protests 939085, etc., of S. S. Kresge Co. et al. against the assessment of duty by the collectors of customs at the ports of New York and Philadelphia.

[Affirmed.]

Barnes, Chilvers & Halstead (*Frank M. Halstead* and *Albert MacC. Barnes, jr.*, of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Samuel Isenschmid* and *Charles D. Lawrence*, special attorneys), for the United States.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers).

SULLIVAN, General Appraiser: The question in this case is whether certain folding pocket scissors are properly dutiable, as classified by the collector, as—

* * * articles valued above 20 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person, such as and including buckles, card cases, chains, cigar cases, *cigar cutters*, cigar holders, cigarette cases, cigarette holders, coin holders, collar, cuff, and dress buttons, combs, match boxes, mesh bags and purses, millinery, military, and hair ornaments, pins, powder cases, stamp cases, vanity cases, *and like articles;* all the foregoing and parts thereof, finished or partly finished, *composed of metal*, * * *—

at 60 per cent ad valorem under paragraph 356, act of 1913, or under the eo nomine provision for *scissors* in paragraph 128 of the same act at 30 per cent ad valorem.

It will be observed the official samples of the folding pocket scissors in question are contained in a cheap cardboard or paper case, covered with red paper imitating leather. It is admitted the scissors are chief value in the entirety, and that the scissors and cases were imported together. The facts, which are not disputed, are that the

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merchandise is folding scissors; that they are used as ordinary scissors; that "they are used by people to carry in the pocket; some women carry them in their handbags."

Q. If a man uses them, he carries them in his pocket?—A. Yes.
Q. *They are designed for that purpose, are they not?*—A. Well, *I believe they are.*

It is true that scissors are eo nomine provided for in paragraph 128, but, as stated by the Government in its brief, paragraph 356, specifically enumerates certain articles, such as buckles and chains which are also eo nomine provided for in paragraphs 151 and 126, also cigar cases, cigar cutters, etc., which also fall within the term "smokers' articles" provided for by paragraph 381. (See Bischoff *v.* United States, 7 Ct. Cust. Appls., 138; T. D. 36458, as to the smokers' articles; also Woolworth's case, G. A. 8437, 39 Treas. Dec., 332, as to key chains.)

If the following questions can be answered in the affirmative, it seems to us these folding pocket scissors are dutiable under paragraph 356:

1. Are they valued above 20 cents per dozen pieces?
2. Are they "designed to be worn on apparel or carried on or about or attached to the person in the same manner as are the enumerated articles and like articles when in their customary use?" (Gallagher *v.* United States, 6 Ct. Cust. Appls., 105; T. D. 35343.)
3. Are they "similar to the prescribed exemplars in respect to the manner in which they are worn or customarily carried upon the person?" (Gallagher case, supra.)
4. Are they "in their customary use * * * carried upon the person of the user, not for warmth or protection like clothing, but rather as incidental articles of mere personal comfort, convenience, or adornment?" (Gallagher case, supra.)
5. Are they composed of metal?

All of these questions are answerable in the affirmative.

Protestants, among the contentions in their brief, state—

If it should be held that paragraph 356 included articles designed and intended to be worn on the person, even though more specifically provided for elsewhere, it would result in the classification of watches, pocketknives, fans, and various other articles specifically provided for under the provisions of said paragraph 356, because such articles are not only designed to be carried or worn on the person but are invariably so worn or carried.

It is true that watches, pocketknives, fans, and other articles designed to be worn or carried on the person are specially provided for in various paragraphs, and they are therefore dutiable under such paragraphs rather than under paragraph 356. But *folding pocket scissors* designed to be worn on apparel or carried on or about or attached to the person are not specially provided for in any paragraph of the tariff act of 1913.

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However, the Court of Customs Appeals in United States *v.* Gluck (8 Ct. Cust. Appls., 11; T. D. 37160) has passed upon this very article. In that case the court had before it, besides a large number of other articles, a leather case containing folding scissors "evidently designed to be carried on the person and not the ordinary scissors provided for elsewhere eo nomine." The handles of those scissors were "jointed in a manner to permit the scissors blades to be folded within the handles"—a description which exactly fits the merchandise in the case at bar. The court held them dutiable under paragraph 356, rather than as cases fitted with traveling sets under paragraph 360. In that case, it is true, the court based its decision on the fact that counsel conceded the cases and contents should be treated as entireties, and therefore the question of segregation and separate dutiability was not considered; but the court said—

> The several articles inclosed in the leather case were, if segregated, dutiable under paragraph 356, within the ruling of the Cross case. We think it should not be held that by placing these articles in a cheap leather case the dutiable status can be changed * * *.

The use to which merchandise may be placed may and does at times control its classification for dutiable purposes.

In the Bischoff case, supra, being the pocket cigar lighter case, the expression "all smokers' articles whatsoever not specially provided for" gave way to the use and design of the article. The board held in its decision affirmed by the Court of Customs Appeals (G. A. 7810, 29 Treas. Dec., 493) that certain gilt and enameled metal articles of the shape and size of a gold-tipped paper cigarette, valued above 20 cents per dozen pieces, and designed to be carried on the person, used to light cigars, were dutiable under the herein-quoted clause of paragraph 356, rather than under the provision in paragraph 381 for "all smokers' articles whatsoever, not specially provided for in this section."

The board in passing thereon stated:

> Did the legislative body intend when it enacted in paragraph 381 a provision for "all smokers' articles whatsoever" to include within that term all articles used by smokers? The term is comprehensive enough to include the merchandise under discussion, and ordinarily would be so construed if it were not for the provision in another paragraph that "articles valued above 20 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person, such as and including * * * cigar cases, cigar cutters, cigar holders, cigarette cases, cigarette holders, * * * match boxes, * * * and like articles, * * * composed of metal," are to pay a duty of 60 per cent ad valorem. Will it be questioned that cigar cases, cigar cutters, and the other articles mentioned above are included within the term "smokers' articles?" Yet they are specifically named in paragraph 356. Did not Congress intend that, as to these smokers' articles, they should be eliminated from paragraph 381? Clearly that was the intent, and this intent is perfectly manifest from a reading of the statute. In addition, the statute declares that "like articles" to the above shall be classified in the same manner. It is evident that the cigar lighter

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in question is a "like article" to those enumerated in the paragraph, for the reason it is carried as an article for the personal comfort or convenience of the smoker, as they are. No other conclusion can be arrived at and give to each paragraph a harmonious construction.

The court in affirming the board stated that the introductory words in the clause of paragraph 356 heretofore quoted "indicate that the denominatively mentioned articles are to be regarded, so far as they go, not only as eo nomine provisions but illustrative as well, and the words 'like articles' following this eo nomine enumeration emphasize the intent that the articles therein expressly named and like articles not specifically mentioned, but *like in purpose* and *like in use*, are to be included within it." Therefore, in view of this conclusion of the court, folding pocket scissors are in effect eo nomine provided for in paragraph 356, because like in purpose, being designed to be carried on or about the person, and like in use, as a person carrying one could very well use it as a cigar cutter.

If, however, it be considered that folding pocket scissors designed to be carried on or about the person are eo nomine provided for as scissors by paragraph 128, and are not in effect eo nomine covered by paragraph 356, in view of the following expression of the Court of Customs Appeals in Cohn *v.* United States (4 Ct. Cust. Appls., 378, 381; T. D. 33536), we should hold them dutiable under paragraph 356:

The rule invoked by the Government that an eo nomine description, other things being equal, must prevail in tariff statutes is sound and well founded upon both logic and precedent, but it is manifestly controlled by the higher rule, that if Congress has indicated in a given case its intent that such rule is not to apply, effect must be given to such intent, because the eo nomine rule itself is but one means of discovering legislative intent which, if and when ascertained, must control.

This is the crux of the rule with reference to eo nomine classification. What was the intent of Congress? When we ascertain such intent it must govern notwithstanding any eo nomine description. Unquestionably the intent of Congress with reference to the merchandise under consideration was to place it upon a higher scale than ordinary scissors. We here have an article designed to be carried on or about the person, different from ordinary scissors not so designed and unfitted to be so carried, and it possesses all the other requirements necessary to bring it within paragraph 356. We so hold.

There is some question as to whether some of these folding pocket scissors were without cases. In our opinion that does not change the situation, for even without the cases they can be conveniently carried on or about the person, inasmuch as when folded the points are amply protected, and they fold into a very compact convenient shape for carrying in the pocket.

The protests are overruled.

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(T. D. 39016—G. A. 8508.)

Brooms of bamboo—Pot scrubs—Orders from Treasury Department—Customs officials appraise and assess duty on their own oaths.

1. Appraisers and collectors administering customs laws, while observing authorized regulations promulgated by the Secretary of the Treasury, as to procedure and method, must, in classifying and appraising merchandise and assessing duty, act on their own responsibility, governed alone, under their official oaths, by their individual judgments.

2. The Board of General Appraisers being the only customs court of original jurisdiction, its decisions, until reversed or set aside, are the law on the questions decided, binding alike on all individuals and officials. A customs official is not at liberty to disregard any such decision because directed to do so by the Treasury Department. This case is controlled by former decisions of this board and the protest is sustained.

United States General Appraisers, New York, February 16, 1922.

In the matter of protests 934510, etc., of E. B. Thomas & Co. against the assessment of duty by the collector of customs at the port of San Francisco.

[Reversed.]

Frank L. Lawrence for the importers.

William W. Hoppin, Assistant Attorney General (*Irving Washburn*, special attorney), for the United States.

Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers; HAY, G. A., not participating).

ADAMSON, General Appraiser: There is no question from the record and the argument but that the merchandise involved in this case is identical in character with that involved in protest 811328 of Dohrmann Commercial Co. decided in Abstract 41549, opinion by Hay, General Appraiser, and also the merchandise involved in protest 852115 of W. J. Byrnes & Co., decided in Abstract 44010, opinion by Adamson, General Appraiser.

It is not contended in this case that the appraising officers acted on their own judgment. They confess that they acted in obedience to an order from the Treasury Department (T. D. 37502), in which the Treasury Department blandly announces that it does not acquiesce in our decision and calls attention to the fact that the Assistant Attorney General will have a new case made on the issue involved, and directs the customs officers, pending final determination, to assess duties, in defiance of the various judgments of this board, at 35 per cent ad valorem as brushes, and not at 15 per cent ad valorem as brooms, under paragraph 336, act of 1913.

In Abstract 44010, the board in its opinion used the following language, which we can not do better than repeat here:

The customs officers at the ports of the United States are responsible on their own oaths to act on their own responsibility according to the law and facts in appraising, classifying merchandise, and imposing duties. Regulations for method and pro-

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cedure, when made by the Secretary of the Treasury by authority of statute law, are entitled to the same force as statute law, when not inconsistent therewith, but there is no authority anywhere for the customs officers to act on specific letters of instruction as to their action in appraising and classifying merchandise and assessing and collecting duty thereon, save only in the few specific cases where particular authority is conferred on the Secretary of the Treasury to grant relief, in which cases orders lawfully issued by the Secretary of the Treasury would usually show to the collector that duties in whole or in part have been remitted and therefore are not due.

There being no change in the law and the facts being the same, the unreversed decisions of this board, which is the only customs court of original jurisdiction, are as binding and conclusive as a final determination of the question presented as could be found in the decision of any other court to which causes may be carried. The customs officers may not make cases, as suggested by the department letter. The customs officers examine the goods and classify them according to law and fact. If they are found identical in character with goods already passed upon on appeal to this court, the last unreversed decision of this court on the subject is the law of the case. If a different state of facts is found to exist, the collector may act according to the facts, and, if a protest is entered on the trial of the case, the testimony may or may not justify his action.

It is unnecessary for the Secretary of the Treasury or anybody else to acquiesce in the decisions of the board. Those decisions, until reversed or set aside, become a part of the law of the land and are binding upon everybody, officials and private citizens.

The protests are sustained.

(T. D. 39017—G. A. 8509.)

Abandonment—Validity of Entry—Nonimportation.

1. Entry executed and lodged with the collector before arrival of the ship, though premature, is good and valid, because after the arrival of the ship it was treated as good and the transaction was completed by payment of the duties and the issuance of a delivery permit.

2. The deputy collector is without authority, after lapse of time for abandonment, to grant permission to redate the original entry so as to establish a new date from which to count the time in which to abandon.

3. A notation by an importer of statement as to amendment and redate is of no value. His second effort to abandon, based on such amended date, is untimely and properly rejected.

4. The evidence showing all casks arrived and contents of some value, a nonimportation is not shown.

United States General Appraisers, New York, February 16, 1922.

In the matter of protest 939958 of Citro Chemical Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

John Giblon Duffy for the importer.

William W. Hoppin, Assistant Attorney General (*John J. Mulvaney* and *John A. Kemp*, special attorneys,) for the United States.

Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers; HAY, G. A., not participating).

ADAMSON, General Appraiser: The protest in this case relates to a consignment of citrate of lime contained in 168 casks. The protest

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claims relief on two grounds, (1) the right to abandon the entire cargo because more than 10 per cent damage had been sustained, and (2) relief on the ground of nonimportation.

It appears that the ship arrived on August 9, 1920; that importer's broker had filed an entry on July 13, 1920; that on August 10, one day after the arrival of the ship, duty was paid and the delivery permit issued. On August 26, 1920, the importer lodged a tender of abandonment which the collector rejected because not lodged in time. A second application for abandonment was made on September 20, 1920, and was also rejected as not in time.

The importer claims that this last notice of abandonment was good and binding and should have been effective because, as he alleges, the entry of July 13, several weeks before the arrival of the ship, was absolutely void; that although the duty was deposited and a discharge permit issued on August 10, after the arrival of the ship, it did not perfect the void entry previously made, but that he was permitted to make a new entry afterwards, and, within 10 days from that entry, he lodged his second notice.

The first notice of abandonment is dated August 26 and refers to entry 16797, the number on the only entry in the case. There is another notice, dated September 18, 1920, referring to the same number of entry, with a footnote at the left-hand corner at the bottom—

Entry amended and redeclared to on September 17, 1920.

Across the caption of that last notice appears the following:

Received in the 7th Division Sep. 18, 1920. P. S. Entry re-declared Sept. 17, 1920, but as duties were paid after arrival of vessel, *Held* al andonment not timely.

At the bottom of the entry on the left-hand corner there appears the following:

Re-declared this 17th day of September 1920. Magoya, Deputy Collector.

On the obverse of the entry appear the words:

"May correct D/A and re-declare. September 16, 1920," signed with the initials which a witness swore were made by Deputy Collector Magoya.

Across the upper face of that entry was written: "No allowance, R. L. A.," who, the witness said, was Deputy Collector Allendorf in the customs division, and the following:

Application of importers for relief from payment of duties on basis of entered value denied in D. L. of Jan. 19/21, 109052/5500/700, Jan. 26/21, D. E. B.

Touching these various papers the witness, who was the importer's broker, testified as follows:

Entry was made and presented to the customhouse for passage; we found the steamship had not arrived and laid it aside; it has a declared date on it; paper had been deposited with the customhouse; when I learned that the steamship had arrived we

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paid the duty on the merchandise August 9, 1920; made no declaration nor did anything at that time, but later on; September 16 got permission from deputy collector to amend our date of arrival; may correct D/A (it means date of arrival) and redeclare September 16, 1920.

Q. What, in your mind, at that time was that whether you took it from the date of the entry, July 13, or whether you took it from the date of arrival of the vessel, your abandonment, which was made August 26, was outside of the 10 days and you could not have any relief under it?—A. Yes. In fact, it was filed knowing there was no relief whatsoever.

Q. So, then, the plan occurred to you or was suggested to you of your redeclaring your entry?—A. Yes, sir.

Q. And changing your date of arrival, and you were then assuming that your entry took place on this second date, September 17?—A. Yes, sir.

The collector ignored all that occurred after the payment of duty on August 10, holding that the payment of the duties and issuance of the permit of delivery cured any difficulty about prematurity of the date of entry, recognizing that as that entry used by them, although prematurely lodged, was perfected by the payment of duties and issuance of the permit and the process of entry was complete and final and not to be affected by any of the subsequent occurrences.

There was never any mistake about the date of arrival, so there was no occasion to correct that. The only thing that the importer was interested in correcting or reinforcing was the entry of July 13, which he alleges was void and could not by any means be made effective by any order, however valid. The date of arrival of the ship must be correct, such date not being anywhere in question.

The first question presented is, When was the entry made? We understand from the law, as construed by this board and the courts, that entry consists of all the things necessary to secure the discharge of the imported merchandise and its introduction into the commerce of the country. It is undoubtedly true that the entry was prematurely made and was of no value if it had been ignored and a new one made on the arrival of the ship and the payment of the duty, but the writing and signing of that entry were not necessarily void. The date of the paper was erroneous and the filing wrong, but it was filed and remained so, and when the ship arrived and the duties were paid, that paper was still in existence and appears to have been accepted and regarded as the proper entry for that merchandise. Nothing was said about it. No attention was called to the fact that it was invalid. Duty was paid and nothing at the time said about the entry. There is no doubt in our minds that that paper was regarded, accepted, and acted on as a paper of that date. The parties had a right so to regard it although it bore a previous date and was prepared at a previous time, and the only correction, if any, necessary to make in it was to redate the filing as of the day the duties were paid and the permit issued. It was certainly good and valid as acted upon at that time whether correctly dated or not.

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As to the part of the alleged entry of the deputy collector, "and redeclared," we doubt the authority of the collector, after entry had been made and permit issued, to reopen the matter and grant any such extension. The difficulty encountered by the contention of the importer, however, is that prior to that time he had already filed a notification of abandonment and had specifically referred to the entry made on July 13, 1920, giving the number thereof and stating that the right was claimed according to that entry.

We hold that the entry had been made and completed, that the effort to abandon failed because the notice was too late, that the redeclaration or attempt to redeclare was correctly ignored by the collector, and that the second notification of abandonment was also properly disregarded by the collector because it was not timely.

As to the second claim in the protest, the testimony is not clear. There is testimony as to its damaged condition by water and also that it was still citrate of lime, the original commodity, but in a damaged condition. There is testimony that it could be reconditioned, but there the testimony stops. There is no evidence as to the results of efforts to recondition it, no evidence as to what percentage in value of the original commodity existed after reconditioning, nor what the expense of that operation amounted to. By adding another consignment of 335 casks to the consignment of 168 casks at bar, the importer in his argument presents a grand total of about $143,000 worth, according to the invoices, which was sold by the steamship company after delivery was refused for $2,500. It does not appear that the damage was exactly uniform throughout the two lots, though from slight examination made long after landing a witness said the lots appeared very much in the same condition. Sufficient to say that the evidence does not prove that the merchandise was totally destroyed in value so as to authorize us to find a nonimportation.

It is clear that the merchandise retained its original character although diluted by water and that it was still of considerable value. How much does not appear. Therefore we are constrained to overrule the protest on both grounds.

(T. D. 39018—G. A. 8510.)

Additional duty assessable on uniform value when unit value is not entered but appraised.

1. Entry following invoice described merchandise as "1 box containing 305 pieces jade stones, $180." The appraiser, valuing by items, reported advanced valuation. Nothing else appeared. The collector, assuming entry to refer to uniform and equal value of all stones, compared such uniform individual value with the appraisal of each item and assessed additional duty accordingly. Such action is presumably correct and the protest against it is overruled.

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2. Importer will not be heard to base impeachment of appraisement on his own alleged failure to make proper entry. In this case the entry accepted by the collector was deemed sufficient.

United States General Appraisers, New York, February 17, 1922.

In the matter of protest 938221 of American Express Co. against the assessment of duty by the collector of customs at the port of San Francisco.

[Affirmed.]

Frank L. Lawrence for the importer.

William W. Hoppin, Assistant Attorney General (*John J. Mulvaney*, special attorney), for the United States.

Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers; HAY, G. A., not participating).

ADAMSON, General Appraiser: In this case the merchandise is described in the invoice as follows:

1 box containing 305 small pieces jade stones, $180.

It was entered as—

1 box jade stone, cut not set, 305 pieces, $180.

The appraiser opened the box and examined each item separately and appraised them as follows:

100 pcs. at	.70	$70.00
70	.80	56.00
48	.60	28.80
25	.60	15.00
12	1.00	12.00
24	.90	21.60
26	.80	20.80
305	Total	224.20
	Packing	.30

The case was submitted on a stipulation of fact which states that, among other things, the rates of additional duty were ascertained on the basis of the individual values of the goods, the collector assuming the goods to have been entered at prices determined by dividing the total entered value by the number of pieces and then comparing this average value of each article with the value attached to it by the appraiser. The stipulation further states that by comparing the total appraised value with the total entered value, the advance on appraisement would have been only 24 per cent.

The protest alleges that no additional duty should have been assessed because no value for any individual item in the shipment was given in the invoice or entry and therefore the entered value of any such item can not be determined because no comparison between the entered and appraised value of any such item can be made.

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It is further claimed that there was no legal entry or appraisement, for the reason that the entry was incomplete or imperfect for want of proper invoice and specification of particulars.

It is further claimed that duty should have been assessed only at the regular rate at which the merchandise was advisorily classified and the rate should have been imposed only upon the entered value instead of the appraised value.

A further claim in the protest is that as to the merchandise subjected to an additional duty greater than 24 per cent, if any additional duty is legally assessable it should be ascertained by comparing the total entered value with the total appraised value.

Most of these grounds of protest are without merit. In fact, it has been held that an importer can not take advantage of his own failure to do his duty in connection with making the proper entry, and it is unnecessary to give further attention to that.

Nor is it clear to us what benefit the importer expects to derive from invalidating the entire proceeding—entry and appraisement. As he did not elect to ignore the arrival of the merchandise and refrain from making entry, thereby allowing his merchandise to be forfeited and sold, it occurs to us that he is rather late in making that point.

As to the point in the protest which we regard as the main proposition, and which is really the only one seriously insisted upon, there is no evidence before us that the collector's estimate was wrong. There is no testimony but the stipulation. Nothing appears except that the collector accepted the entry as offered. It is true he could have rejected it and could have required the importer to make a correct one in detail, if he had deemed it necessary to do so, but, as he and the importer were together, they are both presumed to have understood the situation and there is no evidence that they did not fully understand each other.

The collector seemed to be under the impression that the merchandise was entered at what was intended to be a detailed value of the proportionate part of the entire cost for each article. There is no evidence that he did not so understand it, or that it was not the truth on which he acted. If he acted on the true, correct basis, what harm was done as to any speculative or irregular method by which he arrived? If it was right, nobody can gainsay the correctness of his action. But he probably had a right, from a statement of the number (305) of items on the invoice and entry, to assume that the articles were of uniform and equal value. If it was a lump sum for a mass, why mention the number of the articles? If they were a job lot made without reference to the number of articles, it would have been sufficient to state on the invoice and entry, "1 box jadestones,

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$180," but it is specifically stated how many pieces, and, without any further explanation or evidence, the collector had a right to assume that the articles were of equal value.

But be that as it may, the collector acted. He acted on a theory that he adopted as true and there is no evidence to the contrary, and therefore we assume and presume that his action was right. The protest is overruled.

(T. D. 39019.)

Books in foreign languages—Textbooks.

UNITED STATES *v.* PETRY CO. (No. 2089). PETRY CO. *v.* UNITED STATES (No. 2091).

TEXTBOOKS—BILINGUAL BOOKS—BOOKS PRINTED CHIEFLY IN LANGUAGES OTHER THAN ENGLISH.

A series of books of general interest (mainly fiction), known as "Brentano's Bilingual Series," consisting of parallel translations in English and another language, are not "textbooks" within the meaning of that provision in paragraph 426, tariff act of 1913. Neither are they printed "chiefly in languages other than English," under the same paragraph. The collector's classification of them as books not specially provided for, under paragraph 329, should have been sustained by the Board of United States General Appraisers.

United States Court of Customs Appeals, February 8, 1922.

CROSS-APPEALS from Board of United States General Appraisers, G. A. 8409 (T. D. 38613).

[Modified.]

Bert Hanson and *William W. Hoppin*, Assistant Attorneys General (*Martin T. Baldwin* and *John J. Mulvaney*, special attorneys, of counsel), for the United States.

Walden & Webster contra.

[Oral argument May 4, 1921, by Mr. Baldwin and Mr. Webster.]

Before SMITH, BARBER, and MARTIN, Associate Judges.

[Oral reargument October 6, 1921, by Mr. Mulvaney and Mr. Webster.]

Before DE VRIES, Presiding Judge, and SMITH, BARBER, and MARTIN, Associate Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise now in question consists of two cases of books which were invoiced at London, England, and were entered at the port of New York.

The importer claimed free entry for the books as textbooks, under the enumeration of "textbooks used in schools and other educational institutions," in paragraph 426 of the tariff act of 1913.

The collector, however, held that in fact the books were not textbooks. He accordingly assessed them with duty at the rate of 15 per cent ad valorem under the provision for books not specially provided for in paragraph 329 of the act.

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The importer protested, claiming, as aforesaid, that the books were textbooks used in schools and other educational institutions, and furthermore claiming that they were printed chiefly in languages other than English, and that for both reasons they were entitled to free entry under paragraph 426 aforesaid.

The following is a copy of the paragraph just cited:

(Free list.)

426. Books and pamphlets printed wholly or chiefly in languages other than English; also books and music, in raised print, used exclusively by the blind, and all textbooks used in schools and other educational institutions; Braille tablets, cubarithms, special apparatus and objects serving to teach the blind, including printing apparatus, machines, presses, and types for the use and benefit of the blind exclusively.

The record does not clearly indicate the exact number of publications involved in the protest, but apparently there were in all 19 different works. At the trial before the board the parties selected five of these to serve as samples, and they were made exhibits in the case. Two witnesses were then examined by the importer in support of the claim that the books were textbooks. No testimony was offered in support of the claim that the books were printed "wholly or chiefly in languages other than English," the importer's counsel stating that upon that subject the exhibits would speak for themselves.

The board decided that the books were not textbooks, and denied that claim for free entry. But the board held that certain of them were printed chiefly in languages other than English, and as to these the protest was sustained. As to all others of the books the protest was overruled.

Thereupon cross-appeals were filed in this court by the respective parties, and accordingly both branches of the board's decision are now before the court.

The books in question belong to a series entitled "Brentano's Bilingual Series." Each volume contains a story or other literary material either in English or a foreign language, together with a literal translation thereof into a second language, the two being printed in parallel lines upon opposite pages of the book. By this means a reader has always before him a left-hand page printed in one language and a right-hand page of translation, the two pages containing literal translations of each other, with the corresponding lines arranged exactly parallel with one another. This arrangement continues throughout each volume, and accordingly the books are truly bilingual, for the two mutual translations are so nearly equivalents that they occupy respectively the same number of printed lines and pages, and these throughout are exactly parallel with one another. Invariably one of the languages thus employed is English; that is to say, if English be the original language of the work the corresponding translation will be French, Spanish, or other foreign tongue, whereas

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if the original language of the work be foreign, the translation will be English. The translations are as nearly literal as is consistent with correct expression in the several languages.

One of the sample volumes contains a short story in English by W. W. Jacobs, translated into Italian. Another contains an English story by the same writer translated into French. Another contains a Spanish story, and still another a Russian story, both translated into English. The fifth sample volume is a conversation manual designed for the use of English-speaking travelers in France, giving in parallel lines upon opposite pages many short sentences such as tourists employ when visiting a foreign country. The volume also contains a short dictionary for the translation of selected English words into French. The two outside pages of the paper backs or coverings of the respective volumes, upon which is printed the name of the work, together with brief descriptions and advertisements thereof, as well as the publisher's imprint, are printed exclusively in English, except that several of the foreign stories are listed thereon in their original language.

We may say at once that in our opinion the books thus described are none of them "textbooks used in schools and other educational institutions," and this conclusion we think is justified by an examination of the books themselves as well as by the testimony.

In the case of Dutton *v.* United States (6 Ct. Cust. Appls., 460, 466; T. D. 35987), this court, in dealing with the term "textbooks" in the same tariff provision as the present, said:

> We are satisfied that the term in question properly bears a more limited meaning than that, and applies only to such books as either set out in their text the facts or principles of some branch of learning which is to be taught to students or to such as are prepared with special introductions, notes, glossaries, spacings, or other "editorial apparatus," which particularly adapt them for the use of students or instructors engaged in classroom work as a class apart from mere general readers.

See also G. A. 8195 (T. D. 37781); also Wakem & McLaughlin *v.* United States (10 Ct. Cust. Appls., 24; T. D. 38259).

The books now in question plainly are not prepared or intended for the use of students or instructors when engaged in classroom work as a class apart from mere general readers. The book entitled "French for the Traveler" is of course merely a handbook designed for the use of English-speaking people when traveling in France. The story books, it is true, are intended to assist students of languages by furnishing comparative texts upon opposite pages as aforesaid, but they are thereby made particularly serviceable for general use outside of the classroom. They contain no notes, glossaries, or other "editorial apparatus," such as are above referred to, and are plainly and indeed even professedly designed for general use by all persons who may desire either to acquire or renew a knowledge of some

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foreign language. We accordingly agree with the board in its decision against this branch of the importer's contention.

The alternative contention of the importer, as aforesaid, is that the importations are entitled to free entry under the enumeration of "books and pamphlets printed wholly or chiefly in languages other than English." Upon this point the board held as follows:

We find, however, that there is some merit in the alternative contention of these importers that certain of these books are printed chiefly in languages other than English. It is true that the same text is printed twice in each book, to wit, in English and in some other language; but we find from a close personal inspection of the exhibits that in some instances the foreign words exceed in number those in the English text, whereas in others the contrary is the case. For example, Exhibits 4 and 5, printed in Russian-English and Spanish-English, respectively, contain less foreign than English printed matter, whereas the remaining three books in evidence—those marked Exhibits 1, 2, and 3—contain more foreign than English printed matter. We therefore hold the books printed in Italian-English, represented by Exhibit 1 herein, and those printed in French-English and represented by Exhibits 2 and 3, to be properly entitled to free entry under paragraph 426 as books printed chiefly in languages other than English, as claimed by the importers. As to all other books, and in all other respects, the protest is overruled.

It will be observed that the foregoing finding of the board classifies the two English stories by Jacobs (with parallel foreign translations) and also the conversation manual, aforesaid, as books printed "wholly or chiefly in languages other than English," whereas the Russian and Spanish stories (with parallel translations) are severally excluded from that classification. According to this conclusion the stories by the English writer (with translations) and also the conversation manual would be admitted free of duty, while those by the Russian and Spanish authors (with translations) would be denied free entry.

We are not able to agree with this conclusion. We do not consider it necessary in this case to examine narrowly into the exact force and effect which should be given to the tariff provision now in question, for we think that whatever interpretation might be placed upon that provision it must be said that a volume like those above described would be equally divided between the two contrasting languages composing it and therefore could not fairly be said to be printed chiefly in either. In this view free entry must be denied the importations, since that right is limited to books which are printed not equally but wholly or chiefly in languages other than English.

We may also refer again to the English print upon the first and last pages of the coverings of the respective volumes, for we think that if these pages be taken into account the competing languages in each volume would not stand at a balance, but that the scales would incline against the foreign print in each.

The decision of the board, therefore, in so far as it overruled the protest is affirmed, and in so far as it sustained the protest is overruled. *Modified.*

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CONCURRING OPINION.

SMITH, Judge: The free list provision for "books and pamphlets printed exclusively in languages other than English" appeared for the first time in paragraph 513 of the tariff act of 1890. That provision, reenacted by paragraph 411 of the act of 1894 and by paragraph 502 of the act of 1897, was held to exclude from free entry all books not printed *wholly* in a foreign language. Indeed, the provision was so interpreted that it was held inapplicable to a book having any English whatever within its covers. (T. D. 12578; T. D. 12584; T. D. 24424; E. P. Dutton & Co. *v.* United States (154 Fed., 214), reversing T. D. 25803; T. D. 28026.)

During the preparation of the tariff bill of 1909 certain publishing houses, the typothetae of New York, and the bookbinders' association of the same city joined hands to have all books excluded from the free list of the new bill.

On the hearings before the Ways and Means Committee, libraries and educational institutions vigorously opposed the change and claimed that the demand for books in a foreign language was too small to warrant their publication by American publishers. This contention was not disputed and at least one of the publishing houses advocating a duty on all books admitted that—

> many of the books printed in a foreign language in a foreign country are of such a nature that their production does not collide with any prerogatives of American labor, inasmuch as the demand in this country for such books would be too small for any American publisher to feel encouraged in the undertaking of their publication, but it is also a fact that American publishers whose peculiarity of business or trade gives them more or less work in foreign languages designed for home consumption will, under the prevailing conditions, find it decidedly to their individual advantage to farm out such work in Europe, thus taking away from American labor what legitimately belongs here. (Tariff hearings, 1908, 1909, Vol. VI, p. 6288.)

The House was apparently not convinced that all books should be subjected to duty, and as the advocates of free books asked no change in the wording of any of the free-list provisions then in effect, they were drafted into the House bill and went to the Senate just as they stood in the act of 1897. The House provision for "books and pamphlets printed exclusively in languages other than English" was favorably reported by the Finance Committee of the Senate without amendment or alteration. In Committee of the Whole, however, Senator du Pont called attention to the word "exclusively" in the provision, whereupon the following colloquy took place:

> Mr. DUPONT. I ask the Senator in charge of the bill about the word "exclusively" in paragraph 508. Do I understand that a work in German, containing a few words in English that might make it more definite, would come within this paragraph? I can conceive a ruling that would nullify this whole provision.
>
> Mr. ALDRICH. No; the courts have held that that did not make it dutiable.

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Mr. DUPONT. I ask that paragraph 508 may be passed over, because I intend at the proper time to move an amendment striking out the word "exclusively." (Congressional Record, par. 2, 61st Cong., 1st sess., pp. 1517, 1518.)

Subsequently the Finance Committee of the Senate reported an amendment striking out the word "exclusively" and inserting in lieu thereof the word "chiefly." That amendment was agreed to by the Senate, concurred in by the House, and the provision for "books and pamphlets printed *chiefly* in languages other than English" became paragraph 518 of the act of 1909. Four years later that paragraph, word for word, became part of the tariff bill of 1913 as it passed the House. The Finance Committee of the Senate, however, struck out of the paragraph the language exempting from duty the foreign-language books therein provided for and limited the exemption to books and music for the blind. The Committee of the Whole declined to accept the Finance Committee's amendment, and as finally reported to the Senate the House provision was amended so as to read "books and pamphlets printed *wholly* or chiefly in languages other than English." In that form the provision passed the Senate, and the House concurring it became a part of paragraph 434 of the tariff act of 1913.

From this history of the legislation it is apparent that Congress definitely reached the conclusion that certain foreign-language books should be admitted free of duty and that the requirement that they should be exclusively in a language other than English was an unwise limitation.

What they meant by "chiefly in languages other than English" is not so clear. The board construed the provision to mean books and pamphlets which contained more foreign words than words in English. While that interpretation of the provision conforms to that given to the word "chiefly" in many other parts of the tariff act, it effectuates anomalies and probably a discrimination in duties manifestly not intended by Congress, and therefore it ought not to be accepted if the language used is fairly open to a construction productive of more reasonable results and less likely to favor some foreign-language books to the disadvantage of others of the same kind.

In this very case Jacobs's Selected Stories translated from English into French and Italian were held by the board to be free of duty, whereas stories translated from original Russian and Spanish into English were denied the favor of the free list. Apparently the ideas expressed in English in Jacobs's Stories required for their expression in French and Italian a greater number of words, whereas the ideas expressed in Spanish and Russian demanded for their translation a greater number of English words. It might well occur, therefore, that an English work translated into French and Italian would under the board's construction be admitted free of duty, whereas the very

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same work translated into Russian or Spanish would be subjected to duty. More than that, if the number of words or the preponderance of text determines classification, it would be quite possible to have a foreign work accompanied by its English translation admitted free of duty when translated by one translator and denied free entry when translated by another whose style was less concise. If the board's interpretation be rejected for the reasons stated, and I think it must be, then we are forced to the conclusion that the phrase "books * * * chiefly in a language other than English" means books whose chief worth or value to the reader is the foreign-language component thereof; that is to say, books of which the foreign language is the main, principal, and important part, and to which books the English language used is incidental, or subsidiary or merely explanatory of words or portions of the foreign text.

Some of the books in question are made up of an original foreign text and a complete English translation thereof and others are composed of an original English text accompanied by a full translation into a foreign language. It can hardly be said that the English found in such books is either incidental or subsidiary to the foreign language or merely explanatory of foreign words or parts of the foreign text. Such English was designed to be and is, in fact, of just as much importance as is the foreign language of which it is the translation or into which it is translated. I am therefore of the opinion that none of the books in issue were entitled to free entry, and that the decision of the board in so far as it overrules the protests should be affirmed and in so far as it sustains them it should be *reversed.*

(T. D. 39020.)

Foreign currencies—Rates of exchange.

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), emergency tariff act of May 27, 1921.

TREASURY DEPARTMENT, *February 21, 1922.*

To Collectors of Customs and Others Concerned:

The appended tables of the values of certain foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), act of May 27, 1921, during the period from February 10 to February 23, 1922, both inclusive, is published for the information of collectors of customs and others concerned.

(103512.) ELMER DOVER, *Assistant Secretary.*

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Values of foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), emergency tariff act of May 27, 1921.

PERIOD FEBRUARY 10 TO 16, 1922, INCLUSIVE.

Country.	Name of currency.	Feb. 10.	Feb. 11.	Feb. 14.	Feb. 15.	Feb. 16.
Europe:						
Austria	Krone	$0.000335	$0.000339	$0.000331	$0.000325	$0.000292
Belgium	Franc	.0820	.0816	.0826	.0824	.0824
Bulgaria	Lev	.006967	.006933	.006967	.006942	.007033
Czechoslovakia	Krone	.01885	.01875	.019019	.018975	.018931
Denmark	do	.2049	.2041	.2057	.2065	.2070
England	Pound sterling	4.3520	4.3332	4.3663	4.3550	4.3503
Finland	Markka	.019871	.019871	.019957	.019971	.0199
France	Franc	.0860	.0854	.0867	.0864	.0864
Germany	Reichsmark	.005053	.004995	.005045	.004985	.004991
Greece	Drachma	.0451	.0449	.0450	.0451	.0452
Holland	Florin or guilder	.3725	.3710	.3740	.3727	.3733
Hungary	Krone	.001563	.001523	.001541	.001538	.001542
Italy	Lira	.0491	.0484	.0487	.0487	.0485
Norway	Krone	.1644	.1629	.1670	.1671	.1691
Poland	Polish mark	.000305	000306	.000303	.0003	.000272
Portugal	Escuda	.0735	.0746	.0744	.0737	.0729
Rumania	Leu	.008092	.008046	.0080	.007979	.007938
Serbia	Dinar	.0132	.013217	.013154	.013133	.01313
Spain	Peseta	.1574	.1558	.1571	.1573	.1573
Sweden	Krona	.2598	.2581	.2614	.2618	.2620
Switzerland	Franc	.1944	.1946	.1952	.1948	.1950
Yugoslavia	Krone	.003304	.003277	.003279	.003282	.003275
Asia:						
China	Chefoo tael	.7708	.7667	.7683	.7683	.7675
Do	Hankow tael	.7708	.7667	.7683	.7683	.7675
Do	Shanghai tael	.7279	.7266	.7286	.7263	.7254
Do	Tientsin tael	.7758	.7733	.7733	.7725	.7717
Do	Hongkong dollar	.5417	.5421	.5421	.5415	.5411
Do	Mexican dollar	.5313	.5308	.5307	.5301	.5290
Do	Tientsin or Peiyang dollar.	.5508	.5500	.5483	.5467	.5475
Do	Yuan dollar	.5467	.5483	.5450	.5542	.5533
India	Rupee	.2820	.2818	.2826	.2821	.2820
Japan	Yen	.4729	.4731	.4737	.4744	.4737
Singapore (S. S.)	Dollar	.4950	.4983	.4958	.4942	.4958
North America:						
Canada	do	.956328	.956328	.956953	.960313	.962969
Cuba	Peso	.998542	.998542	.998542	.998542	.99875
Mexico	do	.487813	.487625	.4875	.487875	.48835
Newfoundland	Dollar	.954271	.953229	.954896	.9575	.960833
South America:						
Argentina	Peso (gold)	.8231	.8294	.8303	.8341	.8320
Brazil	Milreis	.1330	.1310	.1314	.1331	.1331
Uruguay	Peso	.7779	.8003	.8004	.8034	.8045

PERIOD FEBRUARY 17 TO 23, 1922, INCLUSIVE.

Country.	Name of currency.	Feb. 17.	Feb. 18.	Feb. 20.	Feb. 21.	Feb. 23.
Europe:						
Austria	Krone	$0.000279	$0.000271	$0.000241	$0.000218	$0.000206
Belgium	Franc	.0830	.0852	.0870	.0869	.0870
Bulgaria	Lev	.006917	.006917	.006883	.006833	.00685
Czechoslovakia	Krone	.018881	.018847	.018825	.018253	.016894
Denmark	do	.2076	.2077	.2078	.2092	.2107
England	Pound sterling	4.3503	4.3747	4.3919	4.3977	4.4150
Finland	Markka	.019914	.020057	.020129	.020214	.0202
France	Franc	.0871	.0896	.0915	.0913	.0916
Germany	Reichsmark	.004842	.004822	.004424	.004573	.004619
Greece	Drachma	.0453	.0453	.0455	.0454	.0454
Holland	Florin or guilder	.3754	.3771	.3800	.3836	.3840
Hungary	Krone	.001534	.001533	.001445	.001464	.001431
Italy	Lira	.0485	.0495	.0504	.0502	.0506
Norway	Krone	.1709	.1711	.1697	.1703	.1714
Poland	Polish mark	.000278	.000275	.000269	000268	.000257
Portugal	Escuda	.0731	.0732	.0724	.0730	.0741
Rumania	Leu	.007946	.007996	.008042	.008092	.00805
Serbia	Dinar	.013042	.013083	.013017	.012833	.012617
Spain	Peseta	.1572	.1579	.1589	.1594	.1601
Sweden	Krona	.2638	.2661	.2651	.2656	.2666
Switzerland	Franc	.1950	.1950	.1949	.1953	.1957
Yugoslavia	Krone	.003275	.003252	.003232	.003189	.003121

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Values of foreign currencies, etc.—Continued.

PERIOD FEBRUARY 17 TO 23, 1922, INCLUSIVE—continued.

Country.	Name of currency.	Feb 17.	Feb. 18.	Feb. 20.	Feb. 21.	Feb. 23.
Asia:						
China	Chefoo tael	$0.7625	$0.7575	$0.7517	$0.7583	$0.7483
Do	Hankow tael	.7625	.7575	.7517	.7583	.7483
Do	Shanghai tael	.7218	.7186	.7115	.7147	.7110
Do	Tientsin tael	.7692	.7625	.7550	.7633	.7533
Do	Hongkong dollar	.5373	.5366	.5356	.5359	.5321
Do	Mexican dollar	.5267	.5238	.5240	.5232	.5215
Do	Tientsin or Peiyang dollar	.5442	.5408	.5383	.5375	.5358
Do	Yuan dollar	.5508	.5475	.5400	.5392	.5342
India	Rupee	.2820	.2825	.2835	.2836	.2817
Japan	Yen	.4739	.4741	.4742	.4745	.4739
Singapore (S. S.)	Dollar	.4979	.4942	.4992	.4933	.4983
North America:						
Canada	do	.962031	.9650	.967188	.969922	.976094
Cuba	Peso	.998126	.998542	.998334	.998751	.998751
Mexico	do	.488531	.489325	.48935	.489975	.48885
Newfoundland	Dollar	.960417	.963125	.965625	.968021	.97375
South America:						
Argentina	Peso (gold)	.8322	.8328	.8337	.8349	.8383
Brazil	Milreis	.1334	.1345	.1351	.1356	.1360
Uruguay	Peso	.8072	.8057	.8073	.8075	.8224

(T. D. 39021.)

Customs forms.

Abolishment and changes of certain customs forms.

TREASURY DEPARTMENT, *February 25, 1922.*

To Collectors of Customs and Others Concerned:

The following customs forms are hereby abolished:

Form 3365, "Declaration of owner of works of art." Use Form 3343, "Declaration on free entry of works of art, artistic antiquities, etc., over 100 years old."

Form 5547, "Record of drawbacks issued and paid."

Form 5937, "Inspector's delivery slip." Use Form 6043 A or 6043 B, "Ticket for goods carted or lightered in bond."

Form 6021 B, "List of inspectors assigned to examine baggage." Use Form 6021, same title, which was formerly Form 6021 A, and which will be changed on next edition.

Form 6075, "Employee's error slip."

The following changes have been made:

Form 3309, "Automobile certificate for cars brought into the United States for touring purposes," to be changed to Form 4447 on next edition.

Form 3491, "Ticket for goods delivered from store, etc.," has been changed to Form 6043 C in order to bring it nearer to its companion Forms 6043 A and 6043 B.

Form 3925, "Record of receipts and deliveries (bonded manufacturing warehouse, class 6)," has been changed to Form 5217, "Record of goods received in and delivered from manufacturing warehouse."

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Form 3929, "Record of goods exported from bonded manufacturing warehouse, class 6," has been changed to Form 5219, "Manufacturing warehouse record."

(93120.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39022—G. A. 8511.)

Straw mats or rugs.

As to straw mats or rugs divisible into three classes as follows: (1) Having both warp and weft; (2) made from straw in its natural state; (3) made wholly or in part of colored straw plaits sewed together; *Held*, that the first class is dutiable at 2½ cents per square yard under paragraph 272; that the second class is dutiable at 25 per cent ad valorem under the provisions of paragraph 368, and the third class at 30 per cent ad valorem under the provisions of paragraph 273, tariff act of 1913. G. A. 3476 (T. D. 17159) cited.

United States General Appraisers, New York, February 21, 1922.

In the matter of protest 935358 of Akawo, Morimura & Co. against the assessment of duty by the collector of customs at the port of New York.

[Modified.]

Walden & Webster (*Henry J. Webster* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers).

MCCLELLAND, General Appraiser: The merchandise which is the subject of this protest consists of straw mats, some of which are woven and have a warp, while others are simply made of braids of straw sewed together. The appraiser returned them as manufactures of straw and the collector assessed duty accordingly, at the rate of 25 per cent ad valorem under paragraph 368 of the tariff act of 1913. It is claimed that duty should have been assessed at 2½ cents per square yard, either directly or by similitude, under paragraph 272, or in the alternative at 15 per cent ad valorem under paragraph 385 of the same act.

It is conceded that all of the rugs represented by Exhibits 1 and 2 had both warp and weft, and were therefore properly dutiable under paragraph 272. The items represented by said exhibits are all those on pages 5 and 6 of the invoice covered by entry 39688, returned for duty at 25 per cent. As to these we hold that they are subject to duty at 2½ cents per square yard as claimed.

As to the rugs made of natural straw or grass (not woven), hereafter detailed as being on invoices 17862 and 3238, we hold that duty was properly assessed.

This leaves only such colored rugs as are represented by Exhibit 3 in dispute. These are shown by the testimony to be as follows: In

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package 70 on page 2 of invoice 17862 (entry 50280), the contents are shown to be—

Size.	Natural (No. of pieces).	Dyed (No. of pieces).
12 x 16½	1	5
8.9 x 15	0	1
9 x 15	2	9
9 x 12	50	39
7½ x 10½	7	28
6 x 9	22	28
4½ x 7½	10	25

At bottom of page 1, invoice 3238, entry 27595—

Size.	Natural (No. of pieces).	Dyed (No. of pieces).
9 x 12 (two items)	31	22
7½ x 10½	0	6
6 x 9	0	(two items) 9
4½ x 7½	0	5

Counsel for protestants is urgent that these colored rugs should take duty as nonenumerated manufactured articles at the rate of 15 per cent under paragraph 385, while counsel for the Government is equally insistent that they are properly dutiable either directly or by similitude under paragraph 273, which provides for—

Carpets, carpeting, mats and rugs made of flax, hemp, jute, or other vegetable fiber (except cotton) * * *

Of course, paragraph 385, which is the "catch-all" provision of the tariff, is not to be considered until every other provision of the act has been exhausted. (G. A. 3476, T. D. 17159, and cases therein cited.)

To entitle protestants to succeed, it is not only necessary for them to show that the collector's assessment as to these colored rugs was erroneous, but, in addition, that their own protest claim is well founded. If, therefore, there is any provision in the tariff act which more specifically covers this merchandise than the general provision for "all articles manufactured in whole or in part, not provided for in this section," contained in paragraph 385, protestants can not succeed since they have not pleaded it in their protest.

Very clearly these colored rugs, being made in whole or in part from straw not in its natural state, and having no weft, are excluded from both paragraphs 272 and 368. Such being the case, we believe the provision in paragraph 273 for "mats and rugs made of flax, hemp, jute, *or other vegetable fiber*" sufficiently comprehensive to include this merchandise, if not directly then by similitude, under the application of the similitude clause in paragraph 386, and so hold. This claim not being made in the protest the collector's action as to this merchandise must stand.

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(T. D. 39023—G. A. 8512.)

Amber bead necklaces—Jewelry—Beaded articles.

1. Complete necklaces composed of real amber beads one without, the other with a clasp composed of amber, having no metal in their composition, valued above 20 cents per dozen pieces, are dutiable as jewelry under paragraph 356 of the act of 1913, rather than as beaded articles under paragraph 333, or as manufactures of amber not specially provided for under paragraph 367.

2. The modifying provision "composed of metal" in the third clause of paragraph 356 does not relate to the first or jewelry clause of that paragraph.—Mamluck *v.* United States (6 Ct. Cust. Appls., 556; T. D. 36198). Kraemer *v.* United States (5 Ct. Cust. Appls., 470; T. D. 35003); Sheldon case, G. A. 6657, T. D. 38390 (14 Treas. Dec., 152); Stern Bros. case, Abstract 36435 (27 Treas. Dec., 184); American Bead Co. *v.* United States (7 Ct. Cust. Appls., 18; T. D. 36259); American Bead Co.'s case (G. A. 8469, T. D. 38883): Mandel's case (10 Ct. Cust. Appls., 44; T. D. 38294), and Mamluck's case, supra, cited and considered.

United States General Appraisers, New York, February 21, 1922.

In the matter of protest 937764-62853 of Fred G. Norman against the assessment of duty by the collector of customs at the port of Chicago.

[Affirmed.]

Comstock & Washburn (*J. Stuart Tompkins* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Harry M. Farrell*, special attorney), for the United States.

Before Board 1 (McCLELLAND, SULLIVAN, and BROWN, General Appraisers).

SULLIVAN, General Appraiser: The official samples of the merchandise in question consist of two complete necklaces composed of real amber beads. Exhibit A has a clasp composed of amber. Exhibit B is without a clasp, the necklace being long enough to pass over the head. Metal does not enter into the composition of either of these necklaces.

The collector assessed this merchandise with duty at 60 per cent ad valorem under the provision in paragraph 356 of the act of 1913 for "Jewelry, commonly or commercially so known, valued above 20 cents per dozen pieces."

The protest is against this assessment of duty on "6 pkgs. of so-called beaded articles." It states:

Said merchandise is not dutiable as assessed. It is dutiable at 50% ad val. or 35% ad val. under Par. 333 or at 10% ad val. under Par. 367 as manufactures wholly or in chief value of amber or of wax, or at 20% ad val. under Par. 357.

After proving the samples, the gist of the evidence of the single witness testifying on behalf of the protestant is that the beads composing these necklaces are made from "genuine rock amber;" there is not any metal in the merchandise, some having an amber clasp, and some being without a clasp, which is evident from a mere inspection of the samples; their value ranges from $1.50 up to $50 or $60 apiece; they are used around the neck as a necklace, and are sold to

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Marshall Field & Co. and other people, also to jewelers. The witness stated Marshall Field & Co. have a jewelry department.

The protestant in his brief urges that by reason of the holding in the case of Kraemer *v.* United States (5 Ct. Cust. Appls., 470, T. D. 35003) (that jewelry requires work in metal, although not necessarily wholly of metal, "but the necessity of the presence of some form of wrought metal to constitute it jewelry still exists"), this merchandise being without metal is not jewelry. In the Kraemer case the metal needed to make necklaces jewelry consisted of the metal clasps.

It will be observed the decision in the Kraemer case was rendered on December 14, 1914, and the paragraphs passed on were 199 and 448 of the tariff act of 1909.

In the Sheldon case, G. A. 6657 (T. D. 28390; 14 Treas. Dec., 152) the board held certain necklaces composed of amber beads permanently strung and having amber screw swivels attached thereto, without metal parts, were dutiable at 60 per cent ad valorem under paragraph 408, tariff act of 1897, and not at 25 per cent ad valorem under paragraph 448 of the same act as manufactures of amber. The board said in that case:

> Amber is not a precious stone, and bead necklaces made therefrom without metal attachments, not being the handiwork of a jeweler, we hold are not commonly known as jewelry.

In the case last cited the jewelry question was not raised, it being merely whether the necklaces were dutiable as manufactures of amber not specially provided for or as "articles not specially provided for composed wholly or in part of beads * * * made of glass or paste, gelatin, metal, *or other material*, but not composed in part of wool." In fact, it was unnecessary to pass on the jewelry question for the reason that jewelry and beaded articles were dutiable under the act of 1897 at the same rate, viz, 60 per cent ad valorem.

Following the Sheldon case, supra, the board held in Stern Bros. case, Abstract 36435 (27 Treas. Dec., 184), that certain cuff links and brooches in chief value of amber, classified as jewelry under paragraph 448 of the tariff act of 1909, were dutiable as manufactures of amber under paragraph 462 of the same act.

The protestant in his brief cites the following from American Bead Co. *v.* United States (7 Ct. Cust. Appls., 18; T. D. 36259):

> There are herein certain samples of beaded necklaces made in *imitation* of amber beads. Inasmuch, however, as Congress in paragraph 357 has not classed amber as a precious or semiprecious stone or material for use in the manufacture of jewelry, and in paragraph 356 has expressly avoided its enumeration among the imitations of settings rated at 60 per cent, the purpose seems obvious not to have so rated for duty *imitations* of amber.

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It will be noted, however, this quotation has reference to imitations of amber, and that above it on the same page (p. 29) the court speaks of amber as follows:

Jewelry as therein indicated and in the common conception is composed of the precious metals or imitations thereof; or of precious or semiprecious stones, pearls, or imitations thereof, or of cameos, coral, or *amber*, including artificial, synthetic, or reconstructed pearls, rubies, or other precious stones, *strung* or set. (Italics ours.)

It is evident from the latter quotation that in the opinion of the court jewelry may be composed of amber.

The Government in its brief cites our decision in American Bead Co.'s case, G. A. 8469 (T. D. 38883), in which among other things we held complete necklaces with clasps, composed of real amber beads, valued over 20 cents per dozen pieces, dutiable as jewelry rather than as beaded articles. It will be observed, however, that there was nothing to show in that case of what the clasps on the amber bead necklaces in question were composed, nor was there any proof that the merchandise was not jewelry.

We thus have presented squarely to the board whether or not real amber bead necklaces, without any metal whatever, in the clasp or otherwise, worn around the neck for purposes of adornment, are jewelry, commonly or commercially so known.

We have set out previous decisions of the board and court, which may or may not assist us in arriving at a satisfactory conclusion of the question on the merchandise at bar.

The testimony is sharp, brief, and to the point. The merchandise is genuine rock amber; the clasp connection is made out of amber, a little bone screw being inserted in two of the beads to fasten them; the value of the necklaces ranges from $1.50 to $60 apiece; they are worn around the neck as a necklace; and are sold to jewelers and department stores that have jewelry departments.

If this merchandise is not jewelry, then indeed we need a new description and definition of what jewelry may be.

Much reliance is placed on the Kraemer case, supra, which held that jewelry requires work in metal, and metal neckchain clasps constitute parts of jewelry. As heretofore stated, that decision was under the tariff act of 1909. It was insisted the clasps being used on necklaces were parts of jewelry, being sold to jewelers, and apparently as susceptible for use on necklaces of metal as of beads.

That case is not controlling on the one at bar. This merchandise falls within the first clause of paragraph 356. It can not be within paragraph 357, as is evident from a reading of the paragraph, which refers to "diamonds and other precious stones, rough or uncut, and not advanced in condition or value from their natural state by cleaving, splitting, cutting or other process;" also to "pearls and parts thereof, drilled or undrilled, but not set or strung; diamonds,

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coral, rubies, cameos, and other precious stones and semiprecious stones, cut but not set, and suitable for use in the manufacture of jewelry." It is clear this merchandise would not fall within those portions of the paragraph. It is not contended that its purpose is in the manufacture of jewelry. Nor does it fall within the provisions of the last sentence of the paragraph, providing for "imitation precious stones, including pearls and parts thereof, for use in the manufacture of jewelry, doublets, artificial, or so-called synthetic or reconstructed pearls and parts thereof, rubies or other precious stones."

The contention is seriously urged that it falls within paragraph 333. A reading of this paragraph will satisfy that such contention is erroneous. That is the bead paragraph of the tariff act of 1913. In its first sentence it refers to "beads and spangles of all kinds, including imitation pearl beads, not threaded or strung, or strung loosely on thread for facility in transportation only." This merchandise is neither separate beads nor beads loosely strung for facility in transportation. The last portion of the paragraph covers "curtains, and other articles not embroidered nor appliquéd and not specially provided for in this section, composed wholly or in chief value of beads or spangles made of glass or paste, gelatin, metal, or other material." It does not fall within this provision for the reason the paragraph must be read in its entirety, and must be construed in harmony with the intent expressed by the paragraph, viz, to provide a duty for *beads as such* and articles composed of beads; not for jewelry, nor for precious, semiprecious, or imitation precious stones or pearls suitable for use in the manufacture of jewelry.

The first provision in paragraph 356 for "jewelry commonly or commercially so known, valued above 20 cents per dozen pieces," does not refer to metal. Metal articles are specifically provided for in each of the other provisions of the paragraph.

In our opinion Congress did not intend to limit the provision in paragraph 356 for "jewelry commonly or commercially so known" to metal jewelry or to jewelry containing metal. If it had it would have so stated, as it did in the other parts of the paragraph, which all have reference to metal articles or to metal articles set with stones, etc. Why did Congress mention metal in all the clauses of paragraph 356, except the first? It is evident it did not wish to limit the provisions of the paragraph to jewelry containing metal.

The merchandise under consideration, being of real amber (which is mentioned in the Standard Dictionary as a gem stone, used in the manufacture of jewelry and ornaments), intended to be worn as a matter of adornment, comes within the provision for jewelry in paragraph 356.

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Mamluck *v.* United States (6 Ct. Cust. Appls., 556; T. D. 36198) was one of the first cases on the jewelry paragraph of the act of 1913 to come before the board and the Court of Customs Appeals. The board held that the first sentence of paragraph 356 was in fact a separate and distinct paragraph of itself—it had reference entirely to jewelry commonly or commercially so known, valued above 20 cents per dozen pieces. This construction by the board was approved by the court, which stated:

> However, when the paragraph was amended by the insertion of the words "60 per centum ad valorem" immediately after the provision for "jewelry, commonly or commercially so known, valued above 20 cents per dozen pieces," the jewelry clause was thereby segregated from the succeeding clauses of the paragraph and converted into a complete and independent provision. Consequently the two modifying provisions just named ["parts thereof, finished or partly finished," and "composed of metal"] no longer applied to it. No other interpretation than this would give due effect to the amendment in question. (The words in brackets are ours.)

Here is a clear statement that "composed of metal" does not relate to the first or jewelry clause of paragraph 356. Therefore, jewelry commonly or commercially so known may or may not have metal in its composition.

We therefore have in favor of the proposition that these amber bead necklaces are jewelry (1) the presumption of correctness arising from the action of the collector, who assessed it as jewelry, which has not been overcome by the protestant, (2) the fact, logically following the testimony of the protestant that it is jewelry, for it is sold to jewelers, and worn around the neck as a necklace, (3) the opinion of the court that jewelry among other things is composed of amber, strung or set (American Bead Co. *v.* United States, supra), and (4) the opinion of the court in the Mamluck case, supra, that "composed of metal" does not relate to the first or jewelry clause of paragraph 356.

Evidence of commercial designation was not offered.

Courts have held that while commercial designation is a fact to be proved, in the absence of such proof the presumption is the commercial meaning of language is the same as its common meaning, and the collector is warranted in so presuming (United States *v.* Mandel, 10 Ct. Cust. Appls., 44; T. D. 38294).

In addition, we have our prior holding on amber bead necklaces in G. A. 8469, supra. While the testimony was slight, yet after due consideration the board held that such merchandise fell within the jewelry provision in paragraph 356. We have reexamined that authority, and do not see any reason to depart therefrom.

We therefore conclude: The merchandise under consideration being completed articles, ready for instant use, permanently strung—not loosely strung on thread for facility in transportation only—is

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properly dutiable as jewelry, commonly or commercially so known, valued above 20 cents per dozen pieces, at 60 per cent ad valorem under paragraph 356, and we so hold.

The protest is overruled.

(T. D. 39024—G. A. 8513.)

Antiques—Repairs—Separation.

Repairs to antique bed, which consist of replacements of pieces of marquetry where the original pieces had been broken and had fallen out, are separable for duty purposes, upon a finding that the original form and shape of the imported article has been retained and nothing added to its original design.

United States General Appraisers, New York, February 24, 1922.

In the matter of protest 940730 of William A. Foster & Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed in part.]

Strauss & Hedges (*John Francis Strauss* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*John J. Mulvaney*, special attorney), for the United States.

Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers; HAY, G. A., not participating).

WAITE, General Appraiser: The importation in this case is invoiced as an antique marquetry bed at $225 and new marquetry $60. It was purchased from A. S. Lob of Amsterdam, Holland, and imported by Otto J. Schultz's Son. It was assessed for duty under paragraph 176 of the law of 1913 as furniture of wood at 15 per cent ad valorem. The importer claims it is free under paragraph 656 of the same law as an artistic antiquity.

At the hearing two witnesses were sworn on behalf of the importer who established in our opinion that the bed in its original form was manufactured more than 100 years before its importation. The necessary certificate and affidavit seem to have been filed and the question to be determined in our judgment is as to whether the repairs which cost $60 are so far unimportant and incidental as to be ignored in the assessment of duty, making the whole article as imported free under said paragraph 656, or whether, upon the other hand, the new material used in the repair of the article should be considered sufficient to destroy its antique character and make it subject to assessment as found by the collector at 15 per cent under paragraph 176, supra.

There is also involved in this case the question as to whether the cost of the article as imported may be separated for duty purposes.

It appears by the invoice that there were certain repairs made upon the bed before it was imported by repairing the marquetry where pieces had been broken and had fallen out. No change was made,

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however, in the style of the bed, neither was there any additional artistic feature added. The cost of these repairs appears to have been about 25 per cent of the total value of the bed.

It has been the practice of the board to separate the value in such cases where the amounts could be accurately arrived at in accordance with the regulations of the Secretary of the Treasury as found in article 395 of the Customs Regulations of 1915, where the following instruction to customs officials is given:

Articles the parts of which are capable of being appraised and reported upon separately may be treated as separate entities, and those portions which are of an age and character entitling them to free entry as artistic antiquities may be passed free, and duty assessed on the remaining parts.

Artistic antiquities are free of duty, though repaired or renovated within 100 years. If, however, such repairs or renovation consist of an addition to an article of an artistic feature which renders it a "work of art" the article is excluded from free entry, even though the repairs or renovation may be slight in extent.

It would seem as though this regulation were intended to cover a case like the present, as we find no artistic feature has been added. The repairs consist merely of replacement of parts of the design which originally constituted one of the artistic features of the bed.

It is unlike a case where the form and shape of the article has been changed to its artistic advantage, or where the additions not only increased its artistic quality but added a substantial and predominating quantity to the whole as originally produced. We find that in this case there has been no addition to the bulk nor change in form, neither has the artistic quality been enhanced.

We are of the opinion, therefore, that the bed as such was more than 100 years old at the time of its importation; that it is artistic in its design and make, and should be admitted free to the extent of its declared value before the repairs were placed upon it; that the repairs mentioned, to the extent of $60, should pay a duty as assessed under paragraph 176. The protest is therefore sustained to that extent and overruled in all other respects.

(T. D. 39025.)

Antidumping act, 1921—Extension of finding by the Secretary of the Treasury.

The Secretary of the Treasury further extends, to include all embroideries known as "Hamburgs" when imported from Switzerland, the finding dated November 1, 1921, under section 201 (*a*) of the antidumping act of 1921, in the case of certain cotton embroideries.

TREASURY DEPARTMENT, *February 25, 1922.*

To Collectors of Customs and Others Concerned:

After due investigation I hereby further extend to include all cotton embroideries commercially known as "Hamburgs" when

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imported from Switzerland, the finding dated November 1, 1921, under section 201 (*a*) of the antidumping act of 1921, in the case of certain cotton embroideries manufactured by G. Morelli & Co., Altach, Austria.

(106085.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39026.)

Arsphenamine, neoarsphenamine (salvarsan, neosalvarsan).

Importation of arsphenamine and neoarsphenamine (salvarsan and neosalvarsan) by unlicensed firms prohibited—Permits to import necessary, under dye and chemical control act.

TREASURY DEPARTMENT, *February 28, 1922.*

To Collectors and Other Officers of the Customs:

The attention of the department has been called to the fact that shipments of arsphenamine, neoarsphenamine (salvarsan, neosalvarsan), and related compounds, products which come under the act of July 1, 1902, governing the importation of viruses, serums, toxins, and other biologic products, as set forth in T. D. 38020 and T. D. 38095, have been offered at various ports of entry through channels other than the recognized American agents of the foreign producers licensed to manufacture and import any of these particular preparations.

Before being admitted to entry these products must comply with the following requirements:

1. The product must have been made in an establishment holding a Treasury Department license for its importation into the United States. There are listed below the names of the only foreign firms holding Treasury Department licenses at the present time for the importation into the United States of arsphenamine, neoarsphenamine (salvarsan, neosalvarsan), or related products, the products for which they are licensed being given, the trade name, in parenthesis, in each case following the official name of the product:

Farbwerke Hoechst, vorm. Meister Lucius and Bruning, Hoechst-am-Main, Germany—

Arsphenamine (salvarsan).
Neoarsphenamine (neosalvarsan).
Sodium arsphenamine (sodium salvarsan).
Silver arsphenamine (silver salvarsan).

Les Etablissements Poulenc Freres, 92 Rue Vielle-du-Temple, Paris III, France—

Arsphenamine (arsenobenzol billon).
Neoarsphenamine (novarsenobenzol billon).

Laboratoires Naline, Villaneuve-la-Garenne, Seine, France—

Phospharsenamine (galyl).

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2. Not less than 10 ampules from each manufacturer's batch must be submitted to the Hygienic Laboratory of the United States Public Health Service at Washington, D. C., for test; several batches may be embraced in a single consignment. When the number of ampules in any batch offered for importation exceeds 1,000 the number of ampules to be forwarded to the Hygienic Laboratory for test shall be 1 per cent of the shipment.

3. Each manufacturer's batch should bear on the labels a distinguishing lot number. If such lot numbers do not appear the entire shipment should be sent to the Hygienic Laboratory.

4. Copies of the manufacturer's chemical and toxicological test must be submitted to the Hygienic Laboratory with the sample.

5. When a shipment has complied with the above requirements and samples have been tested and passed at the Hygienic Laboratory and so reported to the collector of customs, the latter may release the material after he has examined the lot number of the shipment and finds that it corresponds with the lot number of the material tested and passed at the Hygienic Laboratory.

6. In no case shall a shipment not coming from the firms above mentioned and not complying with the requirements specified, be admitted.

Inasmuch as the foregoing products are subject to the restriction of section 501 (*a*) of the act of May 27, 1921 (dye and chemical control act), importations thereof can not be admitted without an import license in each case from the dye and chemical section, Customs Division, Treasury Department.

(51022.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39027.)

Antidumping act, 1921—Finding by the Secretary of the Treasury.

The Secretary of the Treasury makes finding under section 201 (*a*), antidumping act, 1921, of dumping in the case of certain chair seats.

TREASURY DEPARTMENT, *March 3, 1922.*

To Collectors of Customs and Others Concerned:

Section 201 (*a*) of the antidumping act, 1921, provides as follows:

SEC. 201. (*a*) That whenever the Secretary of the Treasury (hereinafter in this act called the "Secretary"), after such investigation as he deems necessary, finds that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation into the United States of a class or kind of foreign merchandise, and that merchandise of such class or kind is being sold or is likely to be sold in the United States or elsewhere at less than its fair value, then he

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shall make such finding public to the extent he deems necessary, together with a description of the class or kind of merchandise to which it applies in such detail as may be necessary for the guidance of the appraising officers.

After due investigation, I find that the industry of making chair seats in the United States is being or is likely to be injured by reason of the importation into the United States of veneer chair seats manufactured in Canada, and that such merchandise is sold or is likely to be sold in the United States at less than its fair value.

For any further description of this particular merchandise, appraising officers will communicate with the special agent in charge at New York.

(106085.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39028.)

Antidumping act, 1921—Finding by the Secretary of the Treasury.

The Secretary of the Treasury makes finding under section 201 (*a*), antidumping act, 1921, of dumping in the case of certain peeled tomatoes in tins.

TREASURY DEPARTMENT, *March 4, 1922.*

To Collectors of Customs and Others Concerned:

Section 201 (*a*) of the antidumping act, 1921, provides as follows:

SEC. 201. (*a*) That whenever the Secretary of the Treasury (hereinafter in this act called the "Secretary"), after such investigation as he deems necessary, finds that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation into the United States of a class or kind of foreign merchandise, and that merchandise of such class or kind is being sold or is likely to be sold in the United States or elsewhere at less than its fair value, then he shall make such finding public to the extent he deems necessary, together with a description of the class or kind of merchandise to which it applies in such detail as may be necessary for the guidance of the appraising officers.

After due investigation I find that the tomato-canning industry in the United States is being or is likely to be injured by reason of the importation into the United States of peeled tomatoes in tins from Italy, and that such merchandise is sold or is likely to be sold in the United States at less than its fair value.

For any further description of this particular merchandise, appraising officers will communicate with the special agent in charge at New York.

(106085.) ELMER DOVER, *Assistant Secretary.*

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(T. D. 39029.)

Foreign currencies—Rates of exchange.

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), emergency tariff act of May 27, 1921.

TREASURY DEPARTMENT, *March 13, 1922.*

To Collectors of Customs and Others Concerned:

The appended table of the values of certain foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), act of May 27, 1921, during the period from February 24 to March 9, 1922, both inclusive, is published for the information of collectors of customs and others concerned.

(93000.) ELMER DOVER, *Assistant Secretary.*

Values of foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), emergency tariff act of May 27, 1921.

PERIOD FEBRUARY 24 TO MARCH 2, 1922, INCLUSIVE.

Country.	Name of currency.	Feb. 24.	Feb. 25.	Feb. 27.	Feb. 28.	Mar. 1.	Mar. 2.
Europe:							
Austria	Krone	$0.000205	$0.000204	$0.000205	$0.000199	$0.00019	$0.000189
Belgium	Franc	.0859	.0862	.0873	.0867	.0871	.0860
Bulgaria	Lev	.006817	.006838	.0069	.006875	.006892	.006896
Czechoslovakia	Krone	.017238	.01765	.017913	.0177	.017272	.016891
Denmark	do	.2095	.2091	.2105	.2105	.2123	.2118
England	Pound sterling	4.3928	4.4182	4.4322	4.4269	4.4408	4.4150
Finland	Markka	.020179	.020186	.0202	.020214	.020343	.0203
France	Franc	.0902	.0907	.0920	.0914	.0921	.0909
Germany	Reichsmark	.004495	.004508	.004339	.004344	.004360	.004123
Greece	Drachma	.0453	.0454	.0460	.0457	.0458	.0458
Holland	Florin or guilder	.3821	.3847	.3845	.3835	.3836	.3818
Hungary	Krone	.001447	.001456	.001444	.001444	.001447	.00145
Italy	Lira	.0507	.0517	.0533	.0528	.0540	.0528
Norway	Krone	.1706	.1710	.1716	.1727	.1763	.1740
Poland	Polish mark	.000268	.000247	.000237	.00026	.000262	.000254
Portugal	Escuda	.0753	.0759	.0782	.0802	.0819	.0823
Rumania	Leu	.007967	.007971	.007967	.007954	.007942	.007883
Serbia	Dinar	.012533	.01248	.012333	.012267	.0122	.01221
Spain	Peseta	.1595	.1593	.1603	.1597	.1603	.1596
Sweden	Krona	.2654	.2647	.2662	.2657	.2663	.2644
Switzerland	Franc	.1956	.1957	.1958	.1958	.1959	.1956
Yugoslavia	Krone	.003125	.003107	.003089	.003055	.003048	.00305
Asia:							
China	Chefoo tael	.7417	.7383	.7367	.7283	.7133	.7167
Do	Hankow tael	.7417	.7383	.7367	.7283	.7133	.7167
Do	Shanghai tael	.7014	.7004	.6952	.6864	.6729	.6798
Do	Tientsin tael	.7467	.7433	.7417	.7333	.7183	.7208
Do	Hongkong dollar	.5311	.5280	.5266	.5234	.5172	.5170
Do	Mexican dollar	.5133	.5138	.5085	.5042	.4973	.5063
Do	Tientsin or Peiyang dollar.	.5350	.5267	.5242	.5267	.5167	.5292
Do	Yuan dollar	.5325	.5300	.5258	.5283	.5150	.5208
India	Rupee	.2785	.2778	.2817	.2809	.2809	.2791
Japan	Yen	.4734	.4728	.4727	.4726	.4720	.4719
Singapore (S. S.)	Dollar	.5025	.4967	.5008	.5025	.5000	.4883
North America:							
Canada	do	.97375	.975781	.979844	.977656	.979844	.976938
Cuba	Peso	.998958	.99875	.99875	.999375	.999167	.998542
Mexico	do	.48945	.489225	.489825	.49025	.4900	.486375
Newfoundland	Dollar	.971458	.973333	.978333	.975625	.977917	.973958
South America:							
Argentina	Peso (gold)	.8380	.8364	.8371	.8379	.8423	.8415
Brazil	Milreis	.1360	.1357	.1360	.1365	.1358	.1367
Uruguay	Peso	.8237	.8226	.8201	.8199	.8220	.8211

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Values of foreign currencies, etc.—Continued.

PERIOD MARCH 3 TO 9, 1922, INCLUSIVE.

Country.	Name of currency.	Mar. 3.	Mar. 4.	Mar. 6.	Mar. 7.	Mar. 8.	Mar. 9.
Europe:							
Austria	Krone	$0.000187	$0.000187	$0.000181	$0.000172	$0.000158	$0.000158
Belgium	Franc	.0863	.0857	.0854	.0850	.0838	.0840
Bulgaria	Lev	.006883	.006883	.006885	.006885	.006885	.006858
Czechoslovakia	Krone	.016406	.016519	.016416	.016406	.016213	.016363
Denmark	do	.2117	.2115	.2115	.2123	.2108	.2108
England	Pound sterling	4.4219	4.4072	4.3956	4.3914	4.3565	4.3583
Finland	Markka	.020257	.020271	.020264	.020414	.020729	.020514
France	Franc	.0912	.0908	.0904	.0904	.0892	.0895
Germany	Reichsmark	.003949	.003948	.003964	.003874	.003933	.004035
Greece	Drachma	.0457	.0457	.0457	.0455	.0454	.0451
Holland	Florin or guilder	.3828	.3817	.3810	.3806	.3778	.3786
Hungary	Krone	.001422	.001427	.001397	.001402	.001377	.001322
Italy	Lira	.0531	.0525	.0519	.0511	.0494	.0508
Norway	Krone	.1759	.1753	.1756	.1775	.1787	.1809
Poland	Polish mark	.000235	.000238	.000231	.000213	.000218	.000219
Portugal	Escuda	.0848	.0822	.0825	.0836	.0803	.0828
Rumania	Leu	.007821	.007813	.007758	.007658	.007533	.007458
Serbia	Dinar	.012483	.012667	.012633	.01342	.01386	.013675
Spain	Peseta	.1598	.1593	.1592	.1586	.1571	.1570
Sweden	Krona	.2641	.2631	.2636	.2644	.2616	.2607
Switzerland	Franc	.1955	.1954	.1952	.1949	.1943	.1941
Yugoslavia	Krone	.003111	.003232	.00315	.003386	.003432	.003386
Asia:							
China	Chefoo tael	.7300	.7267	.7333	.7358	.7442	.7475
Do	Hankow tael	.7300	.7267	.7333	.7358	.7442	.7475
Do	Shanghai tael	.6884	.6879	.6921	.6956	.7034	.7064
Do	Tientsin tael	.7350	.7317	.7383	.7400	.7492	.7508
Do	Hongkong dollar	.5238	.5246	.5232	.5257	.5246	.5261
Do	Mexican dollar	.5071	.5063	.5058	.5075	.5004	.5119
Do	Tientsin or Peiyang dollar	.5325	.5275	.5250	.5283	.5317	.5342
Do	Yuan dollar	.5308	.5250	.5233	.5292	.5267	.5317
India	Rupee	.2795	.2789	.2800	.2794	.2780	.2779
Japan	Yen	.4720	.4720	.4725	.4726	.4728	.4727
Singapore (S. S.)	Dollar	.4942	.5017	.4992	.4992	.4975	.4979
North America:							
Canada	do	.977656	.971875	.969063	.963906	.955469	.964063
Cuba	Peso	.998751	.998752	.999167	.998960	.999167	.999028
Mexico	do	.489688	.489531	.489844	.4900	.490469	.490938
Newfoundland	Dollar	.975833	.969375	.968125	.960417	.954583	.961875
South America:							
Argentina	Peso (gold)	.8406	.8460	.8469	.8490	.8421	.8409
Brazil	Milreis	.1362	.1372	.1391	.1394	.1396	.1390
Uruguay	Peso	.8201	.8187	.8179	.8180	.8155	.8173

(T. D. 39030.)

Rugs.

Appeal directed from decision of the Board of United States General Appraisers, January 13, 1922 (Abstract 44703), holding certain rugs classified as dutiable under paragraph 300 to be dutiable under paragraph 302, tariff act of 1913.

TREASURY DEPARTMENT, *March 7, 1922.*

SIR: The department is in receipt of your letter of the 2d instant, inviting attention to a decision of the Board of United States General Appraisers, dated January 13, 1921 (Abstract 44703), wherein the board held that certain rugs which had been classified as oriental rugs, dutiable at the rate of 50 per cent ad valorem under paragraph 300 of the tariff act of October 3, 1913, were dutiable at the rate of 20 per cent ad valorem under paragraph 302 of the said act.

In accordance with your recommendation, you are hereby requested to file in the name of the Secretary of the Treasury an application with

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the United States Court of Customs Appeals for a review of the said decision in conformity with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ELMER DOVER,
(96657.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 39031.)

Automobile body frames.

Appeal directed from decision of the Board of United States General Appraisers (T. D. 38994, G. A. 8498), wherein so-called automobile body frames classified as automobile bodies under paragraph 119 were held to be dutiable under paragraph 176, tariff act of 1913.

TREASURY DEPARTMENT, *March 7, 1922.*

SIR: The department is in receipt of your letter of the 2d instant, inviting attention to a decision of the Board of United States General Appraisers (T. D. 38994, G. A. 8498), dated January 20, 1922, wherein the board held that automobile body frames which had been classified as automobile bodies dutiable at the rate of 45 per cent ad valorem under paragraph 119 of the tariff act of October 3, 1913, were dutiable as manufactures in chief value of wood at the rate of 15 per cent ad valorem under paragraph 176 of the said act.

In accordance with your recommendation you are hereby requested to file in the name of the Secretary of the Treasury an application with the United States Court of Customs Appeals for a review of the said decision in conformity with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ELMER DOVER,
(100332.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 39032.)

Antidumping act, 1921—Finding by the Secretary of the Treasury.

The Secretary of the Treasury makes finding under section 201 (*a*), antidumping act, 1921, of dumping in the case of rugs from Canada.

TREASURY DEPARTMENT, *March 6, 1922.*

To Collectors of Customs and Others Concerned:

Section 201 (*a*) of the antidumping act, 1921, provides as follows:

SEC. 201. (*a*) That whenever the Secretary of the Treasury (hereinafter in this act called the "Secretary"), after such investigation as he deems necessary, finds that

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an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation into the United States of a class or kind of foreign merchandise, and that merchandise of such class or kind is being sold or is likely to be sold in the United States or elsewhere at less than its fair value, then he shall make such finding public to the extent he deems necessary, together with a description of the class or kind of merchandise to which it applies in such detail as may be necessary for the guidance of the appraising officers.

After due investigation I find that the rug-making industry in the United States is being or is likely to be injured by reason of the importation into the United States of rugs from Canada, and that such merchandise is sold or is likely to be sold in the United States at less than its fair value.

For any further description of this particular merchandise, appraising officers will communicate with the special agent in charge at New York.

(106085.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39033.)

Drawback.

Synopsis of drawback decisions issued between February 6 and March 11, 1922, inclusive.

(A) *Confectionery.*—T. D. 38855 (B) of September 1, 1921, providing for the payment of drawback on chocolate candy manufactured by the Merckens Chocolate Co., of Buffalo, N. Y., with the use of refined sugar produced wholly or in part from imported raw sugar and imported nuts, extended to provide for drawback on chocolate candy manufactured by the said firm with the use of imported cocoa butter in addition to the ingredients above named.

Said regulations amended to provide for the filing of supplemental sworn schedules covering the manufacture of additional kinds of chocolate candy or the use of additional kinds of imported materials and upon verification of such supplemental schedules drawback may be allowed on the articles covered thereby.

Supplemental sworn statement dated January 12, 1922, transmitted to the collector of customs at New York, N. Y., on February 14, 1922. (100732–39.) (Signed) ELMER DOVER, *Assistant Secretary.*

(B) *Confectionery.*—T. D. 38079 (C) of July 1, 1919, providing for the payment of drawback on sweet chocolate, sweet chocolate coating, and sweetened cocoa powder manufactured by the Stollwerck Chocolate Co., of Stamford, Conn., with the use of sugar refined wholly or in part from imported raw sugar, amended to provide for the allowance of drawback on such products when manufactured with the use of imported refined sugar.

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Supplemental sworn statement dated January 31, 1922, transmitted to the collector of customs at New York, N. Y., on March 3, 1922. (102509.) (Signed) ELMER DOVER, *Assistant Secretary.*

(C) *Flour.*—Manufactured by the David Stott Flour Mills, of Detroit, Mich., wholly or in part with the use of imported wheat.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer dated January 18, 1922, showing, in the case of each lot of flour manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, identity, and value of the imported wheat used, the quantity of domestic wheat used, the quantities and values of each grade of flour and of each kind of by-product obtained, and the quantity of waste incurred, together with its value, if any. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported wheat used in the manufacture of the exported flour, as shown by the abstract from the manufacturing record, less the quantity of imported material which the value, if any, of the waste will replace. In liquidation of the abstracts the drawback shall be distributed to the flour and by-products in accordance with their relative values at the time of separation, subject to the limitations of the drawback law as interpreted by the department in T. D. 33809 of October 25, 1913.

Rate effective on and after December 6, 1921.

Sworn statement dated January 18, 1922, transmitted to the collector of customs at Detroit, Mich., on February 27, 1922. (21406.) (Signed) ELMER DOVER, *Assistant Secretary.*

(D) *Hair, human.*—Exported by the West Electric Hair Curler Co., of Philadelphia, Pa., after having been cleaned, sterilized, bleached, dyed, or refined, or subjected to any one or more of these processes by J. Wolkow, of New York, N. Y.

Records shall be kept in the manner described in the sworn statements of J. Wolkow and the West Electric Hair Curler Co., dated December 5, 1921, and January 12, 1922, respectively, showing, in the case of each lot of processed hair produced for exportation with benefit of drawback, the lot number and date of production thereof, the quantity and identity of the imported hair used, the quantity of finished hair obtained and the quantity of each kind of waste incurred together with its value, if any.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported raw human hair used in the production of the exported processed hair as shown by the abstract from the records provided for above, such quantity to be reduced

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according to the quantity of imported material which the value of the waste will replace.

Rate effective on and after October 8, 1921.

Sworn statements dated December 5, 1921, and January 12, 1922, transmitted to the collector of customs at Philadelphia, Pa., on February 9, 1922. (106987-2.) (Signed) ELMER DOVER, *Assistant Secretary.*

(E) *Machinery, textile.*—T. D. 38249 (D) of January 22, 1920, providing for the payment of drawback on roving frames manufactured by the Saco-Lowell Shops, of Boston, Mass., with the use of imported flyers, amended to provide for the payment of drawback on imported flyers when exported separately from the roving frames.

Supplemental sworn statement of the manufacturer dated February 6, 1920, transmitted to the collector of customs at Boston, Mass., on March 4, 1922. (102103-2.) (Signed) ELMER DOVER, *Assistant Secretary.*

(F) *Musk, grained.*—Produced by Fritzsche Bros. (Inc.), of New York, N. Y., from imported crude musk in pods.

A record shall be kept in the manner described in the sworn statement of the producer dated January 27, 1922, showing, in the case of each lot of grained musk produced for exportation with benefit of drawback, the lot number and date of production thereof, the quantity and identity of the imported crude musk used, the quantity of grained musk obtained, and the quantity of waste (empty pods) incurred together with its value, if any. A sworn abstract from such record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported crude musk used in the production of the exported grained musk, as shown by the abstract from the record provided for above, such quantity to be reduced according to the quantity of imported material which the value, if any, of the waste will replace.

Rate effective on and after December 27, 1921.

Sworn statement dated January 27, 1922, transmitted to the collector of customs at New York, N. Y., on March 1, 1922. (104569-22.) (Signed) ELMER DOVER, *Assistant Secretary.*

(G) *Sirup.*—Produced by the Heyl Bros. Co., of Philadelphia., Pa., with the use of imported sirup, imported honey, and refined sugar or refiners' sirup produced wholly or in part from imported raw sugar, or any two or more of such materials with or without the addition of domestic materials, or any one of such imported materials combined with domestic materials.

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A record shall be kept in the manner described in the sworn statement of the producer dated January 30, 1922, showing, in the case of each lot of sirup produced for exportation with benefit of drawback, the lot number and date of production thereof, the quantities and identity of each kind of imported material used, the total quantity of domestic materials used and the quantity of finished sirup obtained. A sworn abstract from such record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported material used in the production of the exported sirup as shown by the abstract from the record provided for above.

Rate effective on and after January 3, 1922.

Sworn statement dated January 30, 1922, transmitted to the collector of customs at Philadelphia, Pa., on March 2, 1922. (62354.) (Signed) ELMER DOVER, *Assistant Secretary.*

(H) *Spectacles, eyeglasses, and goggles.*—T. D. 36099 of January 26, 1916, providing for the payment of drawback on spectacles, eyeglasses, and goggles manufactured by T. A. Willson & Co. (Inc.), of Reading, Pa., with the use of imported lenses, extended to provide for the payment of drawback on such articles when manufactured by Willson Goggles (Inc.), successors to the above-named company.

Supplemental sworn statement dated February 16, 1922, transmitted to the collector of customs at New York, N. Y., on March 10, 1922. (87719.) (Signed) ELMER DOVER, *Assistant Secretary.*

(I) *Stones, semiprecious, engraved or encrusted.*—Exported by the Novelty Stone Engravery, of New York, N. Y., after having been engraved or encrusted or both with various designs.

The drawback allowance for each engraved or engraved and encrusted stone exported shall not exceed the duty paid, less 1 per cent thereof, on one imported stone of the same size, kind, and value.

Rate effective on and after November 20, 1921.

Sworn statement dated December 17, 1921, transmitted to the collector of customs at New York, N. Y., on February 15, 1922. (99998-16.) (Signed) ELMER DOVER, *Assistant Secretary.*

(T. D. 39034.)

Shipments of arms and munitions of war to Mexico.

Collectors of customs informed that the embargo on shipments of arms and munitions of war to Mexico will not be renewed and that export licenses will no longer be required.

TREASURY DEPARTMENT, *March 9, 1922.*

To Collectors of Customs and Others Concerned:

Referring to the joint resolution of Congress approved January 31, 1922, the Secretary of State informs the department, by direction of

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the President, that after careful consideration it has been determined not to renew at this time the embargo on shipments of arms or munitions of war from the United States to Mexico.

At the request of the Secretary of State collectors are informed that no export licenses will be required from and after the 7th instant covering any such shipments.

(82411-21.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39035.)

Certificates of origin for sugar discontinued.

T. D. 24668, T. D. 25545, and T. D. 27606 of September 17, 1903, August 23, 1904, and September 14, 1906, respectively, revoked.

TREASURY DEPARTMENT, *March 13, 1922.*

To Collectors of Customs:

As it does not appear from a large number of consular reports received that any foreign export bounty is paid on sugar, no necessity is perceived at present for certificates of origin for imported sugar. Customs officers will, therefore, discontinue requiring such certificates.

The department has, however, advised the Secretary of State that consular officers, in certifying invoices, should note on the copy sent to the collector any information they may have regarding the payment of any bounty on the sugar covered by the invoices, either in its raw or refined state. Customs officers should, therefore, be on the watch for any such information on invoices. Whenever payment of such bounty is reported or indicated, liquidation of the entry should be suspended and the facts reported to the department for investigation and instructions.

T. D. 24668, T. D. 25545, and T. D. 27606 of September 17, 1903, August 23, 1904, and September 14, 1906, respectively, and all other regulations or instructions in conflict herewith are hereby revoked.

(67760.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39036.)

Antidumping act, 1921—Finding by the Secretary of the Treasury.

The Secretary of the Treasury makes finding under section 201 (*a*), antidumping act, 1921, of dumping in the case of certain tissue paper from England.

TREASURY DEPARTMENT, *March 13, 1922.*

To Collectors of Customs and Others Concerned:

Section 201 (*a*) of the antidumping act, 1921, provides as follows:

SEC. 201. (*a*) That whenever the Secretary of the Treasury (hereinafter in this act called the "Secretary"), after such investigation as he deems necessary, finds

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that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation into the United States of a class or kind of foreign merchandise, and that merchandise of such class or kind is being sold or is likely to be sold in the United States or elsewhere at less than its fair value, then he shall make such finding public to the extent he deems necessary, together with a description of the class or kind of merchandise to which it applies in such detail as may be necessary for the guidance of the appraising officers.

After due investigation I find that the industry of making tissue paper in the United States is being or is likely to be injured by reason of the importation into the United States of tissue paper from England, and that such merchandise is sold or is likely to be sold in the United States at less than its fair value.

For any further description of this particular merchandise, appraising officers will communicate with the special agent in charge at New York, where samples are on file.

(106085.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39037.)

Shipments of arms and munitions of war to the Dominican Republic.

The President's proclamation of October 14, 1905, no longer in force, and therefore there is no prohibition on the shipment of arms and munitions of war to the Dominican Republic.

TREASURY DEPARTMENT, *March 20, 1922.*

SIR: Referring to the President's proclamation of October 14, 1905, prohibiting the exportation of arms and munitions of war from the United States to the Dominican Republic, the Secretary of State informs the department that owing to the enactment of recent legislation by Congress the proclamation is no longer in force, and that, therefore, at present there is no prohibition on the shipment of arms and munitions of war from the United States to the Dominican Republic.

You will be governed accordingly.

Respectfully, ELMER DOVER,
(99118.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 39038.)

Foreign currencies—Rates of exchange.

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), emergency tariff act of May 27, 1921.

TREASURY DEPARTMENT, *March 20, 1922.*

To Collectors of Customs and Others Concerned:

The appended table of the values of certain foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), act of May

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27, 1921, during the period from March 10 to March 16, 1922, both inclusive, is published for the information of collectors of customs and others concerned.

(103512.) ELMER DOVER, *Assistant Secretary.*

Values of foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), emergency tariff act of May 27, 1921.

PERIOD MARCH 10 TO 16, 1922, INCLUSIVE.

Country.	Name of currency.	Mar. 10.	Mar. 11.	Mar. 13.	Mar. 14.	Mar. 15.	Mar. 16.
Europe:							
Austria	Krone	$0.000153	$0.000130	$0.000131	$0.000131	$0.000132	$0.000140
Belgium	Franc	.0840	.0837	.0823	.0819	.0830	.0825
Bulgaria	Lev	.00685	.00685	.006883	.006900	.006933	.0069
Czechoslovakia	Krone	.01675	.017075	.017281	.017863	.017797	.017575
Denmark	do	.2097	.2096	.2090	.2087	.2106	.2092
England	Pound sterling	4.3604	4.3538	4.3206	4.2936	4.3439	4.3398
Finland	Markka	.020457	.020471	.020429	.020514	.020814	.021043
France	Franc	.0896	.0891	.0881	.0882	.0895	.0893
Germany	Reichsmark	.003931	.003867	.003782	.003644	.003732	.003656
Greece	Drachma	.0453	.0452	.0449	.0445	.0446	.0444
Holland	Florin or guilder	.3783	.3775	.3749	.3734	.3763	.3761
Hungary	Krone	.001281	.001263	.001238	.001234	.001236	.001242
Italy	Lira	.0509	.0505	.0490	.0497	.0507	.0503
Norway	Krone	.1777	.1770	.1728	.1733	.1762	.1731
Poland	Polish mark	.000228	.000233	.000222	.000226	.000228	.000228
Portugal	Escuda	.0825	.0826	.0820	.0817	.0804	.0857
Rumania	Leu	.007475	.007425	.007438	.007433	.007492	.007429
Serbia	Dinar	.01456	.01445	.01452	.0137	.01312	.01288
Spain	Peseta	.1570	.1569	.1552	.1536	.1558	.1552
Sweden	Krona	.2607	.2617	.2593	.2563	.2590	.2596
Switzerland	Franc	.1939	.1940	.1935	.1933	.1940	.1942
Yugoslavia	Krone	.003579	.00349	.003533	.003409	.003281	.003211
Asia:							
China	Chefoo tael	.7458	.7458	.7417	.7333	.7417	.7450
Do	Hankow tael	.7458	.7458	.7417	.7333	.7417	.7450
Do	Shanghai tael	.7089	.7104	.7007	.6954	.6996	.7042
Do	Tientsin tael	.7500	.7492	.7467	.7375	.7467	.7500
Do	Hongkong dollar	.5284	.5257	.5304	.5246	.5268	.5302
Do	Mexican dollar	.5122	.5167	.5103	.5073	.5083	.5120
Do	Tientsin or Peiyang dollar.	.5300	.5325	.5292	.5292	.5267	.5292
Do	Yuan dollar	.5283	.5267	.5350	.5250	.5325	.5358
India	Rupee	.2779	.2786	.2766	.2750	.2776	.2780
Japan	Yen	.4729	.4733	.4737	.4739	.4740	.4739
Singapore (S. S.)	Dollar	.4992	.4975	.4942	.4933	.4929	.4908
North America:							
Canada	do	.965625	.965938	.961563	.960938	.965781	.964141
Cuba	Peso	.998958	.999167	.999375	.998958	.999167	.999167
Mexico	do	.491563	.493225	.492281	.494469	.4952	.494125
Newfoundland	Dollar	.963958	.963542	.959792	.95875	.963542	.961667
South America:							
Argentina	Peso (gold)	.8297	.8269	.8171	.8013	.8151	.8154
Brazil	Milreis	.1385	.1379	.1374	.1358	.1369	.1367
Uruguay	Peso	.8158	.8130	.8071	.7980	.7999	.8004

(T. D. 39039.)

Glass articles—T. D. 37316 of August 20, 1917, extended.

Cylinder crown and window glass and plate glass cut to size such as 7 by 9 inches, 14 by 16 inches, and glass in circular or other forms ready for immediate use without further manipulation, dutiable at the rate of 30 per cent ad valorem under paragraph 95 and not under paragraphs 85 to 90, tariff act of 1913.

TREASURY DEPARTMENT, *March 16, 1922.*

SIR: The department is in receipt of your letter of the 17th ultimo, inclosing a communication from the appraiser at your port in regard

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to a proposed change of practice in the classification of cylinder crown or window glass and plate glass cut to size or otherwise prepared or fitted for immediate use in its condition as imported.

It appears to have been the practice to classify cylinder crown or window glass and plate glass cut to size such as 7 by 9 inches, 14 by 16 inches and the like, and glass cut or pressed in circular, oval, or other forms and of definite sizes intended to be used as imported without further manipulation under the provisions of paragraphs 85 to 90 of the tariff act of October 3, 1913, as material and not articles.

In view, however, of the decision of the United States Court of Customs Appeals, T. D. 37011, in which the court distinguished between material and articles, and in view of subsequent decisions of the Board of United States General Appraisers (Abstracts 44737 and 44738), the department concurs in the proposed change in classification.

This change in classification will, however, extend the scope of T. D. 37316 and will not become immediately effective, in view of T. D. 36551. You will, however, assess duty on merchandise of the character in question imported or withdrawn from warehouse 30 days after the date hereof, at the rate of 30 per cent ad valorem as manufactures of glass not specially provided for under paragraph 95 of the tariff act of October 3, 1913.

Respectfully, EDWARD CLIFFORD,
(95620.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 39040.)

Examination of books and accounts of collectors by special agents.

T. D. 36265 of March 24, 1916, revoked.

TREASURY DEPARTMENT, *March 21, 1922.*

To Special Agents in Charge and Others Concerned:

T. D. 36265 of March 24, 1916, is hereby revoked.

Special agents in charge are directed to resume examinations of the books, papers, and accounts of collectors of customs at each port and customs station in their respective districts, in accordance with the provisions of sections 2640 and 2649, Revised Statutes.

Reports submitted setting forth the results of such examinations will be addressed to the Honorable The Secretary of the Treasury and forwarded in triplicate to the Director, Special Agency Service, U. S. Customs, Room 2020, Interior Department Building, Washington, D. C.

ELMER DOVER, *Assistant Secretary.*

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(T. D. 39041.)

Common carrier.

Approval of common carriers' bonds.

TREASURY DEPARTMENT, *March 20, 1922.*

To Collectors of Customs and Others Concerned:

The common carriers' bonds of the following transportation companies have been approved:

Bond of the New England Steamship Co., New Haven, Conn., dated February 27, 1922, approved March 11, 1922, filed with the collector of customs at New York.

Bond of the New York, New Haven & Hartford Railroad Co., New Haven, Conn., dated February 27, 1922, approved March 11, 1922, filed with the collector of customs at New York.

Bond of the Hartford & New York Transportation Co., Hartford, Conn., February 27, 1922, approved March 11, 1922, filed with the collector of customs at New York.

ELMER DOVER, *Assistant Secretary.*

(T. D. 39042.)

Supervision and conduct of special investigations—Scope and authority of special agents.

TREASURY DEPARTMENT, *March 21, 1922.*

To Customs Officers and Others Concerned:

T. D. 33706 of August 25, 1913, provided that the supervision and conduct of special investigations are to be under direction and control of special agents in charge, and specifically mentioned investigations "involving the customs or the enforcement of the opium laws." This regulation further provided that local customs officers working on such cases should operate under the direction of the agent in charge.

The provisions of that regulation are hereby reaffirmed and extended to include investigations of violations of the customs laws involved in the introduction into the United States, or smuggling, of prohibited liquors.

Paragraphs 244 and 245 of T. D. 37374, September 20, 1917, which provide that all investigations of the smuggling of opium shall be under the supervision of special agents in charge, are hereby reaffirmed and extended to include all investigations relating to the introduction into the United States of prohibited liquors; and all cases involving investigations where the merchandise has already been landed and carried beyond local customs lines should be handled under the direction of the special agent in charge, with such assistance from

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other customs officials and employees as is provided for by T. D. 33706 of August 25, 1913.

Special agents will not be detailed to operate under the personal direction of executive or administrative officers of the customs as personal aids, nor be assigned to work within a special agency district independently of the agent in charge of such district, except when expressly authorized by the Secretary or Assistant Secretary in charge of revenue.

Agents who, by their own initiative, develop cases of violations of the customs laws, or who receive personal advices of such violations involving investigation, shall report each case immediately to the agent in charge, and act under his supervision and direction.

All official communications emanating from a headquarters port shall be signed by the individual agent and countersigned by the agent in charge.

All letters and reports addressed to the department from field agents, relative to investigations, must be addressed to the Secretary of the Treasury (Director, Special Agency Service, U. S. Customs, Room 2020, Interior Building), Washington, D. C.

(100000-50.) ELMER DOVER *Assistant Secretary.*

(T. D. 39043.)

Cellulose ester—Chemical compound.

Appeal directed from decision of the Board of United States General Appraisers (T. D. 39003, G. A. 8502), dated January 27, 1922, holding so-called acetol dutiable at the rate of 15 per cent ad valorem under paragraph 5. tariff act of 1913.

TREASURY DEPARTMENT, *March 23, 1922.*

SIR: The department is in receipt of your letter of the 21st instant, inviting attention to a decision of the Board of United States General Appraisers on protest 938375 (T. D. 39003, G. A. 8502), dated January 27, 1922, wherein the board held that certain so-called acetol, which had been classified as dutiable at the rate of 25 per cent ad valorem under paragraph 25 of the tariff act of October 3, 1913, was dutiable at the rate of 15 per cent ad valorem under paragraph 5 of the said act.

In accordance with your recommendation, you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision in conformity with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ELMER DOVER,
(71184.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 39044.)

Drawback.

Synopsis of drawback decisions issued between March 13 and 25, 1922, inclusive.

(A) *Fabrics, pile.*—Manufactured by the Peerless Plush Manufacturing Co., of Paterson, N. J., with the use of various kinds of imported yarn.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer, dated January 11, 1922, showing, in the case of each lot of pile fabric manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, value, and identity of each kind of imported material used, the quantity and kind of finished product obtained, and the quantity of waste incurred, together with its value, if any. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported material used in the manufacture of the exported pile fabric, as shown by the abstract from the manufacturing record, such quantity to be reduced according to the quantity of imported material which the value, if any, of the waste will replace.

Rate effective on and after October 19, 1921.

Sworn statement dated January 11, 1922, transmitted to the collector of customs at New York, N. Y., on March 14, 1922. (95145–2.) (Signed) ELMER DOVER, *Assistant Secretary.*

(B) *Medicinal preparation; "Ferrol."*—Manufactured by the National Ferrol Co., of New York, N. Y., with the use of domestic taxpaid alcohol.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer, dated February 18, 1922, showing, in the case of each lot of ferrol manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of the domestic taxpaid alcohol used, the quantity of finished product obtained, and the number and size of containers in which packed. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the tax paid on the quantity of domestic alcohol used in the manufacture of the exported medicinal preparation as shown by the abstract from the manufacturing record.

Supplemental sworn schedules may be filed covering additional kinds of medicinal preparations or changes in formula or size of containers, and upon verification of such supplemental schedules draw-

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back may be allowed on medicinal preparations manufactured in accordance therewith.

Rate effective on and after July 12, 1921.

Sworn statement dated February 18, 1922, transmitted to the collector of customs at New York, N. Y., on March 17, 1922. (95496.) (Signed) EDWARD CLIFFORD, *Assistant Secretary.*

(C) *Milk, evaporated.*—Manufactured by the Nestlé's Food Co., at its factories at Morristown, N. Y., and Enosburg Falls, Vt., wholly or in part with the use of imported raw milk.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer, dated February 21, 1922, showing, in the case of each lot of evaporated milk manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of the imported raw milk used, the quantity of domestic milk used, if any, the quantity and brand name of the evaporated milk obtained, and the number and size of containers in which packed. A sworn abstract from such manufacturing record shall be filed with the drawback entry or certificate of manufacture.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported milk used in the manufacture of the exported evaporated milk, as shown by the abstract from the manufacturing record.

Supplemental sworn statements may be filed covering additional factories manufacturing evaporated milk for exportation with benefit of drawback with the use of imported raw milk, and upon verification of such supplemental sworn statements and approval by the department, drawback may be allowed on evaporated milk manufactured at such factories.

Rate effective on and after August 2, 1921.

Sworn statement dated February 21, 1922, transmitted to the collector of customs at New York, N. Y., on March 14, 1922. (22627.) (Signed) EDWARD CLIFFORD, *Assistant Secretary.*

(D) *Milk, condensed.*—T. D. 35548 of June 24, 1915, as extended by T. D. 37937 (C) of March 15, 1919, providing for the payment of drawback on condensed milk manufactured by the Nestlé's Food Co., at its various factories, with the use of sugar refined wholly or in part from imported raw sugar, extended to provide for the payment of drawback on condensed milk manufactured by the said company at its factories at Morristown, N. Y., and Enosburg Falls, Vt., with the use of imported raw milk.

The quantity of raw milk which may be taken as a basis for the allowance of drawback shall not exceed the quantity used in the manufacture of the exported condensed milk as shown by the abstract from the manufacturing records.

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Extension effective on and after June 3, 1921.

Supplemental sworn statement dated February 4, 1922, transmitted to the collector of customs at New York, N. Y., on March 14, 1922. (22627.) (Signed) ELMER DOVER, *Assistant Secretary.*

(E) *Milk, condensed.*—T. D. 37810 (D) of November 12, 1918, as amended by T. D. 38043 (F) of January 5, 1919, providing for the payment of drawback on condensed milk manufactured by the Sheffield Condensed Milk Co., of New York, N. Y., with the use of sugar refined wholly or in part from imported raw sugar, further amended to provide for the payment of drawback on condensed milk manufactured with the use of imported refined sugar.

Sworn statement of the manufacturer, dated September 17, 1921, transmitted to the collector of customs at New York, N. Y., on February 6, 1922. (103025–16.) (Signed) EDWARD CLIFFORD, *Assistant Secretary.*

(F) *Wool; pulled, washed, and graded.*—Produced by Hess & Drucker, of New York, N. Y., at its factory at Newark, N. J., for its own account or for the account of others from imported wool on skins.

A record shall be kept in the manner described in the sworn statement of the producer, dated February 20, 1922, showing, in the case of each lot of pulled, washed, and graded wool produced for exportation with benefit of drawback, the lot number and date of production thereof, the quantity and identity of the imported wool on skins used, and the quantity of each grade of wool obtained therefrom, together with the quantity of waste incurred and its value, if any. A sworn abstract from such record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported wool on skins used in the production of the exported, pulled, washed, and graded wool, as shown by the abstract from the record provided for above. In case the entire quantity of wool obtained from any import lot is not exported, the drawback shall be distributed to the several grades of wool according to their relative values at the time of separation.

Rate effective on and after November 4, 1921.

Sworn statement dated February 20, 1922, transmitted to the collector of customs at New York, N. Y., on March 15, 1922. (102290–5.) (Signed) ELMER DOVER, *Assistant Secretary.*

(G) *Wool; pulled, washed, and graded.*—T. D. 38973 (K) of December 31, 1921, providing for the payment of drawback on washed and graded wool produced by E. S. Parkhurst & Co., of Gloversville, N. Y., for the account of the Liberty Dressing Co., or H. R. Bradt, of Gloversville, N. Y., or for the account of others, from wool pulled

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from imported skins by the Liberty Dressing Co., extended to provide for drawback on washed and graded wool produced by E. S. Parkhurst & Co. for the account of the Stockamore Leather Co., or Jones & Naudin, of Gloversville, N. Y., from wool pulled from imported skins by the Stockamore Leather Co.

Extension effective on and after November 4, 1921.

Sworn statements of Jones & Naudin and the Stockamore Leather Co., dated January 13 and 14, 1922, respectively, transmitted to the collector of customs at New York, N. Y., on March 10, 1922. (100893-3.) (Signed) ELMER DOVER, *Assistant Secretary.*

(T. D. 39045.)

Foreign currencies—Rates of exchange.

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), emergency tariff act of May 27, 1921.

TREASURY DEPARTMENT, *March 25, 1922.*

To Collectors of Customs and Others Concerned:

The appended table of the values of certain foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), act of May 27, 1921, during the period from March 17 to March 23, 1922, both inclusive, is published for the information of collectors of customs and others concerned.

(103512.) ELMER DOVER, *Assistant Secretary.*

Values of foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), emergency tariff act of May 27, 1921.

PERIOD MARCH 17 TO 23, 1922, INCLUSIVE.

Country.	Name of currency.	Mar. 17.	Mar. 18.	Mar. 20.	Mar. 21.	Mar. 22.	Mar. 23.
Europe:							
Austria	Krone	$0.000149	$0.000149	$0.000148	$0.000139	$0.000138	$0.000135
Belgium	Franc	.0841	.0852	.0843	.0845	.0853	.0845
Bulgaria	Lev	.006983	.00685	.00685	.0069	.00685	.00685
Czechoslovakia	Krone	.017388	.017428	.017303	.017275	.017338	.017419
Denmark	do	.2100	.2126	.2119	.2122	.2136	.2128
England	Pound sterling	4.3642	4.4004	4.3796	4.3776	4.4017	4.3882
Finland	Markka	.020929	.021157	.0210	.0212	.021214	.021207
France	Franc	.0899	.0903	.0897	.0899	.0910	.0905
Germany	Reichsmark	.003566	.003516	.003357	.003522	.003317	.003026
Greece	Drachma	.0440	.0440	.0437	.0436	.0435	.0436
Holland	Florin or guilder	.3777	.3800	.3789	.3775	.3789	.3778
Hungary	Krone	.001238	.001238	.001245	.001245	.001227	.001161
Italy	Lira	.0509	.0511	.0507	.0508	.0514	.0511
Norway	Krone	.1740	.1741	.1748	.1745	.1761	.1753
Poland	Polish mark	.00023	.000238	.000241	.00024	.000236	.000242
Portugal	Escuda	.0901	.0917	.0874	.0887	.0884	.0869
Rumania	Leu	.007492	.007442	.007467	.007481	.007508	.007492
Serbia	Dinar	.012817	.01285	.01274	.01258	.01258	.01222
Spain	Peseta	.1561	.1564	.1553	.1552	.1564	.1557
Sweden	Krona	.2607	.2633	.2621	.2612	.2625	.2617
Switzerland	Franc	.1946	.1951	.1949	.1946	.1950	.1947
Yugoslavia	Krone	.003196	.00318	.003153	.003136	.00312	.003048

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Values of foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), emergency tariff act of May 27, 1921—Continued.

PERIOD MARCH 17 TO 23, 1922, INCLUSIVE—continued.

Country.	Name of currency.	Mar. 17.	Mar. 18.	Mar. 20.	Mar. 21.	Mar. 22.	Mar. 23.
Asia:							
China	Chefoo tael	$0.7467	$0.7467	$0.7558	$0.7583	$0.7533	$0.7517
Do	Hankow tael	.7467	.7467	.7558	.7583	.7533	.7517
Do	Shanghai tael	.7090	.7131	.7183	.7198	.7183	.7196
Do	Tientsin tael	.7508	.7500	.7592	.7625	.7583	.7575
Do	Hongkong dollar	.5329	.5375	.5390	.5408	.5404	.5398
Do	Mexican dollar	.5195	.5220	.5210	.5215	.5225	.5239
Do	Tientsin or Peiyang dollar.	.5350	.5375	.5367	.5400	.5408	.5392
Do	Yuan dollar	.5300	.5325	.5392	.5463	.5383	.5392
India	Rupee	.2778	.2786	.2779	.2777	.2789	.2794
Japan	Yen	.4741	.4750	.4745	.4740	.4742	.4740
Singapore (S. S.)	Dollar	.4925	.4892	.4900	.4933	.4925	.4950
North America:							
Canada	do	.964844	.966563	.965625	.967344	.972266	.972031
Cuba	Peso	.999375	.998751	.998751	.998958	.99875	.998542
Mexico	do	.494625	.49325	.4953	.497375	.496125	.496625
Newfoundland	Dollar	.962292	.964167	.963333	.965417	.970521	.969792
South America:							
Argentina	Peso (gold)	.8157	.8336	.8318	.8312	.8289	.8315
Brazil	Milreis	.1369	.1371	.1361	.1356	.1357	.1349
Uruguay	Peso	.8031	.8033	.8025	.7997	.8034	.8070

(T. D. 39046.)

Values of foreign coins.

[Circular No. 1.]

TREASURY DEPARTMENT, *April 1, 1922.*

In pursuance of the provisions of section 25 of the act of August 27, 1894, as amended by section 403, Title IV, of the act of May 27, 1921, I hereby proclaim the following estimate by the Director of the Mint of the values of pure metal contents of foreign coins to be the values of such coins in terms of the money of account of the United States, to be followed in estimating the value of all foreign merchandise exported to the United States during the quarter beginning April 1, 1922, expressed in any such metallic currencies: *Provided, however,* That if no such value has been proclaimed, or if the value so proclaimed varies by 5 per cent or more from a value measured by the buying rate in the New York market at noon on the day of exportation, conversion shall be made at a value measured by such buying rate, as determined by the Federal Reserve Bank of New York and published by me as certified by said bank pursuant to the provisions of said section 25 as amended.

A. W. MELLON, *Secretary.*

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Estimates by the Director of the Mint of the values of foreign coins.

Country.	Legal standard.	Monetary unit.		Value in terms of U. S. money.	Remarks.
Argentine Republic	Gold	Peso		$0.9648	Currency: Paper, normally convertible at 44 per cent of face value; now inconvertible.
Austria-Hungary	do	Krone		.2026	
Belgium	Gold and silver.	Franc		.1930	Member Latin Union; gold is actual standard.
Bolivia	Gold	Boliviano		.3893	12½ bolivianos equal 1 pound sterling;
Brazil	do	Milreis		.5462	Currency: Government paper; normally convertible at 16 pence (=$0.3244) per milreis.
British Colonies in Australasia and Africa.	do	Pound sterling		4.8665	
British Honduras	do	Dollar		1.0000	
Bulgaria	do	Lev		.1930	
Canada	do	Dollar		1.0000	
Chile	do	Peso		.3650	Currency: Inconvertible paper.
China	Silver	Tael	Amoy	.7753	The tael is a unit of weight, not a coin. The customs unit is the Haikwan tael. The values of other taels are based on their relation to the value of the Haikwan tael. The Yuan silver dollar of 100 cents is the monetary unit of the Chinese Republic; it is equivalent to .644+ of the Haikwan tael.
			Canton	.7728	
			Cheefoo	.7415	
			Chin Kiang	.7573	
			Fuchau	.7171	
			Haikwan (customs).	.7888	
			Hankow	.7254	
			Kiaochow	.7509	
			Nankin	.7672	
			Niuchwang	.7280	
			Ningpo	.7454	
			Peking	.7558	
			Shanghai	.7082	
			Swatow	.7162	
			Takau	.7802	
			Tientsin	.7509	
		Dollar	Yuan	.5060	
			Hongkong	.5099	
			British	.5099	
			Mexican	.5137	Mexican silver pesos issued under Mexican decree of Nov. 13, 1918, are of silver content approximately 41% less than the dollar here quoted; and those issued under decree of Oct. 27, 1919, contain about 51% less silver.
Colombia	Gold	Peso		.9733	Currency: Government paper and gold.
Costa Rica	do	Colon		.4653	
Cuba	do	Peso		1.0000	
Denmark	do	Krone		.2680	
Ecuador	do	Sucre		.4867	
Egypt	do	Pound (100 piasters)		4.9431	The actual standard is the British pound sterling, which is legal tender for 97½ piasters.
Finland	do	Markka		.1930	
France	Gold and silver.	Franc		.1930	Member Latin Union; gold is actual standard.
Germany	Gold	Mark		.2382	
Great Britain	do	Pound sterling		4.8665	
Greece	Gold and silver.	Drachma		.1930	Do.
Guatemala	Silver	Peso		.4729	Currency: Inconvertible paper.
Haiti	Gold	Gourde		.2000	Do.
Honduras	Silver	Peso		.4729	Currency: Bank notes.
India [British]	Gold	Rupee		.4866	(10 rupees equal 1 pound sterling.)
Indo-China	Silver	Piaster		.5107	
Italy	Gold	Lira		.1930	Member Latin Union; gold is actual standard.
Japan	do	Yen		.4985	
Liberia	do	Dollar		1.0000	Currency: Depreciated silver token coins. Customs duties are collected in gold.
Mexico	do	Peso		.4985	
Netherlands	do	Guilder (florin)		.4020	
Newfoundland	do	Dollar		1.0000	
Nicaragua	do	Cordoba		1.0000	

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Estimates by the Director of the Mint of the values of foreign coins—Continued.

Country.	Legal standard.	Monetary unit.	Value in terms of U. S. money.	Remarks.
Norway	Gold	Krone	$0.2680	
Panama	do	Balboa	1.0000	
Paraguay	do	Peso (Argentine)	.9648	Currency: Depreciated Paraguayan paper currency.
Persia	Silver	Kran	.0871	Currency: Silver circulating above its metallic value. Gold coin is a commodity only, normally worth double the silver.
Peru	Gold	Libra	4.8665	
Philippine Islands	do	Peso	.5000	
Portugal	do	Escudo	1.0805	Currency: Inconvertible paper.
Rumania	do	Leu	.1930	
Russia	do	Ruble	.5146	
Salvador	do	Colon	.5000	
Santo Domingo	do	Dollar	1.0000	
Serbia	do	Dinar	.1930	
Siam	do	Tical	.2709	
Spain	Gold and silver.	Peseta	.1930	Valuation is for gold peseta; currency is notes of the Bank of Spain.
Straits Settlements	Gold	Dollar	.5678	
Sweden	do	Krona	.2680	
Switzerland	do	Franc	.1930	Member Latin Union; gold is actual standard.
Turkey	do	Piaster	.0440	(100 piasters equal to the Turkish £.)
Uruguay	do	Peso	1.0342	
Venezuela	do	Bolivar	.1930	

(T. D. 39047.)

Cargo reports.

TREASURY DEPARTMENT, *March 27, 1922.*

To Collectors of Customs, Masters of Vessels, and Others Concerned:

The department is in receipt of a letter from the chairman of the United States Shipping Board, dated the 15th instant, transmitting a copy of a resolution adopted by the United States Shipping Board authorizing the collection of information of cargoes exported from and imported into the United States.

The chairman of the board requests the hearty cooperation of customs officers at the various ports for the purpose of procuring properly prepared cargo reports (Forms 7801 and 7802), and that in the event of noncompliance with the requirements of T. D. 38479 of July 26, 1920, the penalty referred to in the last paragraph of the said decision be imposed.

The resolution of the board above referred to is quoted for your information, and you are directed to see that the provisions thereof are complied with or that the penalty referred to in T. D. 38479 is imposed:

Whereas information as to the quantity and kind of cargo carried by vessels employed in ocean transportation to and from the United States is essential to the proper discharge of duties imposed on this board by law and will otherwise contribute to the development of the American merchant marine:

Resolved, That the Bureau of Research of this board is hereby authorized and directed to procure such information, and to that end every common carrier by water

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operating a vessel in either direction between a port in continental United States and a port in a foreign country or in any of the possessions of the United States, and also between a port on the Pacific coast of continental United States and another port in continental United States not on the Pacific coast, is hereby ordered to file in duplicate with the collector of customs at the first port of entry in continental United States, on each such voyage of the vessel or at the last port of clearance therefrom, a statement in writing in such form, and certified in such manner, as may be prescribed by the Bureau of Research, setting forth the quantity, by weight or measure or both, of each of the several kinds of goods, wares, merchandise, and property forming the cargo of such vessel. The imports shall be so stated as to show separately the imports from the several ports of shipment. The exports shall be so stated as to show separately the exports to each port of destination: *Provided, however*, When it may appear to the Bureau of Research that separate statements of the species, quantities, or kinds of any particular kind of article would be impracticable or would swell the statement without utility, such articles shall be grouped in classes to be designated by the Bureau of Research. The penalties prescribed by the shipping act, 1916, shall be imposed on any person failing to supply the information as above required.

Resolved, further, That the information furnished the United States Shipping Board by any person under the above resolution shall be held confidential by the United States Shipping Board, except as embodied in reports in the aggregate showing volume of various commodities moved and comparative tonnage of vessels involved; which reports will be furnished applicants in proper cases.

(93120.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39048.)

Currency conversion.

Dates to be taken as the dates of exportation for the purposes of currency conversion under section 403, emergency tariff act of 1921.

TREASURY DEPARTMENT, *March 25, 1922.*

SIR: Reference is made to the questions affecting currency conversion which have arisen between you and the General Accounting Office regarding (1) the taking of the date of sailing of a vessel as shown by the Maritime Register, and (2) the taking of the date of certification of the invoice when the date of sailing does not appear on the I. T. entry.

The date of sailing of a vessel from a foreign port stated on an I. T. entry should be that given by the master of the vessel in his declaration on entering his vessel at the customhouse, and such date when shown on an I. T. entry should be followed by you instead of any date shown by the Maritime Register.

When no date of sailing is shown on an I. T. entry the date of certification of the invoice, or the date of the invoice, should be taken according to the regulations published in Article VIII of T. D. 38742.

Respectfully, ELMER DOVER,
(93000.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Cleveland, Ohio.*

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(T. D. 39049.)

Order establishing centralized purchasing for the Treasury Department.

[Circular No. 283.]

TREASURY DEPARTMENT, *March 28, 1922.*

To All Officers of the Treasury Department and Others Concerned:

1. There is hereby created and established a Bureau of Supply in and for the Treasury Department. The officer in charge will be known as the Director of Supply, and will be detailed from a bureau or division of the Treasury Department.

2. The Bureau of Supply is assigned for administrative purposes to the Assistant Secretary in charge of foreign loans and miscellaneous.

3. The Bureau of Supply will assume on April 1, 1922, or as soon thereafter as practicable, all functions relating to the actual purchase of material and supplies now exercised by offices, divisions, services, and bureaus (hereinafter referred to as bureaus) in the Treasury Department in Washington and in the field, except as hereinafter provided. The Bureau of Engraving and Printing is not included in this order, because of existing statutes. These functions will be taken over gradually, and no bureau in Washington or in the field shall cease its present purchasing operations until specifically so instructed.

The Bureau of Supply will take over such storerooms within the department as can be efficiently used for common distribution of supplies.

4. All requisitions for material and supplies will be prepared by the consuming bureaus and must show the appropriation from which payment is to be made, the necessity of the purchase, and such other details as may be required by the Bureau of Supply, including specifications if necessary.

All requisitions made by consuming bureaus to be paid for from appropriations under their control will be submitted by such bureaus to the Bureau of Supply.

All other requisitions will be submitted to the Bureau of Supply through the office having control of the appropriation and must be approved by such officer.

The head of the office controlling the appropriation from which purchases are to be made, or his duly authorized representatives, will be responsible for the legality and necessity of procurement and, subject to the approval of the Director of Supply, for the inspection of material upon delivery. They will prepare vouchers for payment and certify upon such vouchers that the articles were secured in accordance with the law, have been received in good condition and in the quality and quantity specified; that prices charged are just, reasonable, and in accordance with the order or contract.

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The heads of the consuming bureaus will be charged with the duty of anticipating their requirements so as to permit of orderly and economical procurement, and yet avoid having public funds tied up in surplus stocks.

They will, when requested, coordinate their requirements with those of other bureaus and submit them at designated periods to permit of combined purchase and inspection, interchangeability or standardization of supplies and limitations in types, grades, and varieties.

5. The Director of Supply will be responsible for the prompt, efficient, economical, and legal manner of procurement. All orders or contracts for supplies involving an expenditure of $100 or more will be approved by the assistant secretary in charge of the bureau concerned, but for supplies involving an expenditure of less than $100, the order or contract may be approved by the Director of Supply.

Copies of all orders and contracts shall be furnished to the bureaus concerned.

The Director of Supply will conduct all business relations with contractors in respect to orders and contracts, with the exception that inspecting offices may correspond directly with contractors on matters of inspection only, furnishing copies of such correspondence to the Director of Supply.

The Director of Supply will be responsible for the inspection of articles purchased for stock to be delivered at common storerooms under his supervision in Washington and may call upon the consuming bureaus for assistance.

6. This order does not supersede or modify any of the provisions of Department Circular No. 3, dated October 8, 1915, prescribing regulations for the conduct of the General Supply Committee. The functions of that committee will be performed as at present, except that supervision now exercised by the Chief Clerk will hereafter be undertaken by the Director of Supply.

A. W. MELLON,
Secretary of the Treasury.

(T. D. 39050.)

Smoking prohibited.

[Circular No. 284.]

TREASURY DEPARTMENT, *March 30, 1922.*

To Heads of Bureaus and Chiefs of Divisions, Secretary's Office, Treasury Department:

The orders and regulations of the Treasury Department prohibiting smoking in file rooms, in the elevators, and in the corridors are

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hereby amended and supplemented by prohibiting smoking in supply and storage rooms, in the Treasury garages, and in those parts of the department where currency and securities are handled. Smoking is also prohibited where files, papers, and records of an easily inflammable nature are handled, reviewed, or maintained, if and when deemed advisable in the judgment of the head of office, as a precautionary measure against fire.

A. W. MELLON,
Secretary of the Treasury.

(T. D. 39051.)

Prohibited plumage—Unplucked game birds.

T. D. 33944 of December 2, 1913, and T. D. 35307 of April 10, 1915, amended.

TREASURY DEPARTMENT, *March 31, 1922.*

To Collectors of Customs and Others Concerned:

T. D. 33944, dated December 2, 1913, regarding the prohibition under paragraph 347 of the tariff act of October 3, 1913, against the importation of certain plumage is hereby amended to limit the period of the bond provided for therein to three months within which time plumage, admitted to entry on unplucked game birds, must be returned to the collector of customs or competent evidence submitted showing that it has been destroyed or exported from the United States.

Cash deposited under the provisions of T. D. 35307, dated April 10, 1915, in lieu of the bond mentioned above, should be receipted for on Form 5119, stamped "Special Deposit," and should be covered into the Treasury at the expiration of the period of three months, unless the plumage has been returned to the collector within that period or satisfactory evidence presented of its destruction or exportation. T. D. 35307 is amended accordingly.

(92655-27.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39052.)

Antidumping act, 1921—Finding by the Secretary of the Treasury.

The Secretary of the Treasury makes finding under section 201 (*a*), antidumping act, 1921, of dumping in the case of cut glassware from England.

TREASURY DEPARTMENT, *March 28, 1922.*

To Collectors of Customs and Others Concerned:

Section 201 (*a*) of the antidumping act, 1921, provides as follows:

SEC. 201. (*a*) That whenever the Secretary of the Treasury (hereinafter in this act called the "Secretary"), after such investigation as he deems necessary, finds that an

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industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation into the United States of a class or kind of foreign merchandise, and that merchandise of such class or kind is being sold or is likely to be sold in the United States or elsewhere at less than its fair value, then he shall make such finding public to the extent he deems necessary, together with a description of the class or kind of merchandise to which it applies in such detail as may be necessary for the guidance of the appraising officers.

After due investigation I find that the industry of making cut glassware in the United States is being or is likely to be injured by reason of the importation into the United States of cut glassware from England and that such merchandise is sold or is likely to be sold in the United States at less than its fair value.

For any further description of this particular merchandise, appraising officers will communicate with the special agent in charge at New York.

(106085.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39053.)

Antidumping act, 1921—Finding by the Secretary of the Treasury.

The Secretary of the Treasury makes finding under section 201 (*a*), antidumping act, 1921, of dumping in the case of photographic dry plates from England.

TREASURY DEPARTMENT, *March 31, 1922.*

To Collectors of Customs and Others Concerned:

Section 201 (*a*) of the antidumping act, 1921, provides as follows:

SEC. 201. (*a*) That whenever the Secretary of the Treasury (hereinafter in this act called the "Secretary"), after such investigation as he deems necessary, finds that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation into the United States of a class or kind of foreign merchandise, and that merchandise of such class or kind is being sold or is likely to be sold in the United States or elsewhere at less than its fair value, then he shall make such finding public to the extent he deems necessary, together with a description of the class or kind of merchandise to which it applies in such detail as may be necessary for the guidance of the appraising officers.

After due investigation I find that the industry of making photographic dry plates in the United States is being or is likely to be injured by reason of the importation into the United States of photographic dry plates from England, and that such merchandise is sold or is likely to be sold in the United States at less than its fair value.

For any further description of this particular merchandise, appraising officers will communicate with the special agent in charge at New York.

(106085.) ELMER DOVER, *Assistant Secretary.*

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(T. D. 39054.)

No consul.

No consul located at St. Laurent, French Guiana.

TREASURY DEPARTMENT, *April 4, 1922.*

To Collectors of Customs and Others Concerned:

The Secretary of State has recommended to this department that St. Laurent, French Guiana, be placed on the "no consul" list.

Invoices, therefore, certified pursuant to the provisions of section 2844 of the Revised Statutes, at St. Laurent, French Guiana, may be accepted by collectors of customs.

(64064.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39055.)

Cocaine.

Cocaine to be released from customs custody only on presentation of a special permit under the dye and chemical control act, approved May 27, 1921, as extended, or on submission of satisfactory evidence that it is not a synthetic organic drug.

TREASURY DEPARTMENT, *April 5, 1922.*

To Collectors of Customs and Others Concerned:

In order to give effect to section 501 (*a*) of the act of Congress approved May 27, 1921, containing the provisions for the control of importations of certain dyes, chemicals, and drugs, as extended by the further acts of Congress approved August 24, 1921, and November 16, 1921, and by virtue of the authority vested in the Secretary of the Treasury by said acts, it is considered and has been held that cocaine produced from the Java leaf is a synthetic organic drug within the meaning of said provision and as such requires a special permit to effect its release from customs custody. Cocaine obtained from the South American leaf is not considered to be a synthetic organic drug within the meaning of said provision, and as such does not require a special permit to effect its release from customs custody.

Collectors of customs shall in each case require the importer to present a special permit for the release of cocaine from customs custody unless in any case sufficient evidence shall be received by the collector from the importer or consignee showing that the cocaine sought to be imported is not in fact a synthetic organic drug in accordance with the above-stated interpretation.

The above requirements for effecting the release of cocaine from customs custody must not be construed as waiving in any manner any of the requirements under the internal revenue laws and regulations applicable to the importation of cocaine.

ELMER DOVER, *Assistant Secretary.*

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(T. D. 39056.)

Centralized purchasing for the Treasury Department—Director of Supply designated—Assumes duty April 10, 1922.

[Circular No. 286.]

TREASURY DEPARTMENT, *April 6, 1922.*

To Heads of Bureaus and Chiefs of Divisions, Secretary's Office, Treasury Department:

Mr. Howard Baker has been detailed from the Bureau of the Budget to the Bureau of Supply, created by Department Circular No. 283 of March 28, 1922, and will assume the duties of that office as director on Monday, April 10, 1922, in offices located in the Graham Building, 412–416 Fourteenth Street NW.

Mr. Baker will gradually take over all functions relating to the actual purchase of material and supplies as provided in said circular, but at present only such purchases will be made by him as are now made by the Chief Clerk of the department.

All requisitions should be prepared and submitted strictly in accordance with the provisions of paragraph 4 of Department Circular No. 283.

In addition to the duties above outlined, Mr. Baker will on April 10 take over the supervision of the General Supply Committee which is now exercised by the Chief Clerk of the department.

A. W. MELLON,
Secretary of the Treasury.

(T. D. 39057.)

Germany—Discriminating duties.

Proclamation of the President under section 4228, Revised Statutes, suspending and discontinuing discriminating duties in the case of German vessels and their cargoes.

TREASURY DEPARTMENT, *April 7, 1922.*

To Collectors of Customs and Others Concerned:

The appended proclamation of the President issued under the provisions of section 4228, Revised Statutes, suspending and discontinuing discriminating duties in the case of German vessels and their cargoes, is published for the information of collectors of customs and others concerned.

(100686.) ELMER DOVER, *Assistant Secretary.*

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GERMANY—SUSPENSION OF TONNAGE DUES.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas, section 4228 of the Revised Statutes in part provides as follows:

"Upon satisfactory proof being given to the President, by the government of any foreign nation, that no discriminating duties of tonnage or imposts are imposed or levied in the ports of such nation upon vessels wholly belonging to citizens of the United States, or upon the produce, manufactures, or merchandise imported in the same from the United States or from any foreign country, the President may issue his proclamation, declaring that the foreign discriminating duties of tonnage and impost within the United States are suspended and discontinued, so far as respects the vessels of such foreign nation, and the produce, manufactures, or merchandise imported into the United States from such foreign nation, or from any other foreign country; the suspension to take effect from the time of such notification being given to the President, and to continue so long as the reciprocal exemption of vessels, belonging to citizens of the United States, and their cargoes, shall be continued, and no longer."

Whereas, satisfactory proof was received by me from the German Government on November 11, 1921, that no discriminating duties of tonnage or imposts are levied or imposed in the waters of Germany upon vessels wholly belonging to citizens of the United States or upon the produce, manufactures, or merchandise imported in such vessels, from the United States, or from any foreign country:

Now, therefore, I, Warren G. Harding, President of the United States of America, by virtue of the authority vested in me by section four thousand two hundred and twenty-eight of the Revised Statutes of the United States, do hereby declare and proclaim that the foreign discriminating duties of tonnage and imposts within the United States are suspended and discontinued so far as respects the vessels of Germany and the produce, manufactures, or merchandise imported in said vessels into the United States from Germany, or from any other foreign country; the suspension to take effect from November 11, 1921, and to continue so long as the reciprocal exemption of vessels belonging to citizens of the United States and their cargoes shall be continued, and no longer.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 22nd day of March, in the year of our Lord one thousand nine hundred and twenty-two, and of the Independence of the United States the one hundred and forty-sixth.

[SEAL.] WARREN G. HARDING.

By the President:

CHARLES E. HUGHES,
Secretary of State.

[No. 1623.]

(T. D. 39058.)

Exportation of arms or munitions of war to China.

Permits from State Department for exportation of arms or munitions of war to China required. President's proclamation of March 4, 1922, published.

TREASURY DEPARTMENT, *April 8, 1922.*

To Collectors of Customs and Others Concerned:

The appended proclamation of the President, dated March 4, 1922, pursuant to the joint resolution of Congress, approved January 31, 1922, making it unlawful to export arms or munitions of war to

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China, except under exceptions and limitations prescribed by the Secretary of State, is published for the information of customs officers and others concerned, with instructions to customs officers that no shipments of such articles shall be permitted to leave this country for China without the production of a permit issued by the Department of State. Applications for such permits should be addressed to that department.

(47507.) ELMER DOVER, *Assistant Secretary.*

EXPORTATION OF ARMS OR MUNITIONS OF WAR TO CHINA UNLAWFUL.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas, Section I of a Joint Resolution of Congress, entitled a "Joint resolution to prohibit the exportation of arms or munitions of war from the United States to certain countries, and for other purposes," approved January 31, 1922, provides as follows:

"That whenever the President finds that in any American country, or in any country in which the United States exercises extraterritorial jurisdiction, conditions of domestic violence exist, which are or may be promoted by the use of arms or munitions of war procured from the United States, and makes proclamation thereof, it shall be unlawful to export, except under such limitations and exceptions as the President prescribes, any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or by Congress."

And whereas, it is provided by Section II of the said joint resolution that "Whoever exports any arms or munitions of war in violation of section I shall on conviction, be punished by fine not exceeding $10,000, or by imprisonment not exceeding two years, or both."

Now, therefore, I, Warren G. Harding, President of the United States of America, acting under and by virtue of the authority conferred in me by the said joint resolution of Congress, do hereby declare and proclaim that I have found that there exist in China such conditions of domestic violence which are or may be promoted by the use of arms or munitions of war procured from the United States as contemplated by the said joint resolution; and I do hereby admonish all citizens of the United States and every person to abstain from every violation of the provisions of the Joint Resolution above set forth, hereby made applicable to China, and I do hereby warn them that all violations of such provisions will be rigorously prosecuted.

And I do hereby enjoin upon all officers of the United States, charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said joint resolution and this my proclamation issued thereunder, and in bringing to trial and punishment any offenders against the same.

And I do hereby delegate to the Secretary of State the power of prescribing exceptions and limitations to the application of the said joint resolution of January 31, 1922, as made effective by this my proclamation issued thereunder.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this fourth day of March in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the United States of America the one hundred and forty-sixth.

[SEAL.] WARREN G HARDING.

By the President:

HENRY P. FLETCHER,

Acting Secretary of State.

[No. 1621.]

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(T. D. 39059.)

Foreign currencies—Rates of exchange.

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), emergency tariff act of May 27, 1921.

TREASURY DEPARTMENT, *April 8, 1922.*

To Collectors of Customs and Others Concerned:

The appended table of the values of certain foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), act of May 27, 1921, during the period from March 24 to April 6, 1922, both inclusive, is published for the information of collectors of customs and others concerned.

(103512.) ELMER DOVER, *Assistant Secretary.*

Values of foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), emergency tariff act of May 27, 1921.

PERIOD MARCH 24 TO 30, 1922, INCLUSIVE.

Country.	Name of currency.	Mar. 24.	Mar. 25.	Mar. 27.	Mar. 28.	Mar. 29.	Mar. 30.
Europe:							
Austria	Krone	$0.000137	$0.000136	$0.000138	$0.000138	$0.000134	$0.000135
Belgium	Franc	.0844	.0842	.0837	.0835	.0840	.0839
Bulgaria	Lev	.006883	.0069	.006908	.006867	.006883	.006883
Czechoslovakia	Krone	.017931	.017688	.017825	.017989	.0182	.018506
Denmark	do	.2122	.2119	.2106	.2096	.2110	.2110
England	Pound sterling	4.3878	4.3844	4.3728	4.3653	4.3738	4.3727
Finland	Markka	.020943	.020871	.0207	.020244	.020263	.019763
France	Franc	.0907	.0904	.0899	.0899	.0901	.0900
Germany	Reichsmark	.003024	.003084	.002945	.003016	.003076	.003105
Greece	Drachma	.0433	.0431	.0427	.0422	.0438	.0440
Holland	Florin or guilder	.3780	.3781	.3774	.3770	.3773	.3773
Hungary	Krone	.001088	.001103	.001082	.001119	.001115	.001132
Italy	Lira	.0514	.0512	.0508	.0507	.0508	.0510
Norway	Krone	.1780	.1785	.1769	.1773	.1777	.1772
Poland	Polish mark	.000241	.000243	.000243	.000245	.000249	.000244
Portugal	Escuda	.0844	.0849	.0857	.0862	.0843	.0814
Rumania	Leu	.007425	.0073	.007216	.007186	.007194	.007181
Serbia	Dinar	.01232	.012225	.012257	.012293	.012343	.012257
Spain	Peseta	.1558	.1557	.1553	.1548	.1551	.1549
Sweden	Krona	.2617	.2615	.2609	.2608	.2608	.2601
Switzerland	Franc	.1946	.1945	.1942	.1939	.1942	.1943
Yugoslavia	Krone	.003053	.003053	.003053	.003051	.003075	.003057
Asia:							
China	Chefoo tael	.7533	.7500	.7567	.7533	.7567	.7592
Do	Hankow tael	.7533	.7500	.7567	.7533	.7567	.7592
Do	Shanghai tael	.7188	.7196	.7219	.7211	.7225	.7263
Do	Tientsin tael	.7575	.7575	.7608	.7575	.7608	.7642
Do	Hongkong dollar	.5398	.5371	.5386	.5386	.5405	.5393
Do	Mexican dollar	.5253	.5228	.5250	.5260	.5283	.5298
Do	Tientsin or Peiyang dollar.	.5400	.5383	.5425	.5400	.5454	.5483
Do	Yuan dollar	.5400	.5358	.5392	.5433	.5438	.5433
India	Rupee	.2790	.2788	.2781	.2764	.2774	.2778
Japan	Yen	.4740	.4743	.4733	.4739	.4742	.4743
Singapore (S. S.)	Dollar	.4975	.4933	.4983	.4958	.4950	.4950
North America:							
Canada	do	.973125	.9725	.970521	.969758	.972361	.971979
Cuba	Peso	.99875	.99875	.998875	.998750	.998500	.998375
Mexico	do	.49685	.49625	.495875	.490875	.4920	.4925
Newfoundland	Dollar	.970417	.969167	.968438	.9675	.969844	.970156
South America:							
Argentina	Peso (gold)	.8299	.8245	.8171	.8103	.8140	.8132
Brazil	Milreis	.1358	.1358	.1359	.1344	.1348	.1353
Uruguay	Peso	.8060	.8041	.8002	.7987	.7952	.7972

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Values of foreign currencies, etc.—Continued.

PERIOD MARCH 31 TO APRIL 6, 1922, INCLUSIVE.

Country.	Name of currency.	Mar. 31.	Apr. 1.	Apr. 3.	Apr. 4.	Apr. 5.	Apr. 6.
Europe:							
Austria	Krone	$0.000139	$0.000137	$0.000136	$0.000134	$0.000135	$0.000135
Belgium	Franc	.0841	.0840	.0844	.0848	.0845	.0843
Bulgaria	Lev	.006883	.006917	.006867	.006867	.00685	.006883
Czechoslovakia	Krone	.018978	.018983	.019069	.018939	.018569	.018881
Denmark	do	.2108	.2107	.2114	.2117	.2113	.2110
England	Pound sterling	4.3781	4.3765	4.3939	4.4009	4.3921	4.3838
Finland	Markka	.019681	.019988	.019925	.019763	.019575	.019213
France	Franc	.0903	.0902	.0910	.0914	.0913	.0909
Germany	Reichsmark	.003475	.003302	.003167	.003110	.003161	.003244
Greece	Drachma	.0439	.0437	.0439	.0440	.0443	.0441
Holland	Florin or guilder	.3779	.3778	.3792	.3794	.3781	.3773
Hungary	Krone	.001181	.001175	.001193	.001157	.001168	.001154
Italy	Lira	.0515	.0517	.0529	.0531	.0523	.0519
Norway	Krone	.1773	.1774	.1807	.1820	.1818	.1813
Poland	Polish mark	.000247	.000259	.000259	.000241	.000257	.000260
Portugal	Escuda	.0814	.0818	.0818	.0810	.0808	.0806
Rumania	Leu	.007159	.007147	.007128	.007141	.007144	.007138
Serbia	Dinar	.012414	.012229	.012157	.01205	.012279	.012336
Spain	Peseta	.1551	.1549	.1551	.1541	.1527	.1536
Sweden	Krona	.2601	.2602	.2614	.2618	.2611	.2602
Switzerland	Franc	.1942	.1942	.1944	.1946	.1945	.1943
Yugoslavia	Krone	.003103	.003043	.003044	.003011	.003068	.003058
Asia:							
China	Chefoo tael	.7617	.7650	.7608	.7567	.7600	.7650
Do	Hankow tael	.7617	.7650	.7608	.7567	.7600	.7650
Do	Shanghai tael	.7296	.7308	.7265	.7242	.7267	.7311
Do	Tientsin tael	.7658	.7696	.7650	.7608	.7642	.7692
Do	Hongkong dollar	.5441	.5409	.5380	.5368	.5405	.5386
Do	Mexican dollar	.5335	.5325	.5285	.5290	.5316	.5315
Do	Tientsin or Peiyang dollar.	.5492	.5475	.5467	.5458	.5483	.5483
Do	Yuan dollar	.5475	.5475	.5433	.5392	.5417	.5467
India	Rupee	.2766	.2768	.2771	.2775	.2775	.2774
Japan	Yen	.4741	.4740	.4739	.4740	.4740	.4738
Singapore (S. S.)	Dollar	.5000	.4967	.4967	.4967	.4967	.5000
North America:							
Canada	do	.971597	.968917	.970625	.970729	.969979	.970625
Cuba	Peso	.998250	.998438	.998250	.998625	.997969	.99825
Mexico	do	.492625	.490875	.490375	.492375	.4920	.492375
Newfoundland	Dollar	.969219	.967031	.968281	.968203	.967422	.967813
South America:							
Argentina	Peso (gold)	.8137	.8110	.8111	.8113	.8053	.7834
Brazil	Milreis	.1358	.1354	.1355	.1352	.1350	.1347
Uruguay	Peso	.7926	.7881	.7878	.7852	.7831	.7765

(T. D. 39060—G. A. 8514.)

Shortage.

1. The collector of customs properly refused to allow claim of shortage because the importer failed to furnish copy of claim on the shipper, with reply thereto, required by reasonable provision (*d*) in amended regulation 608, November 18, 1918 (T. D. 37813).

2. On objection of Government counsel, the affidavits rejected by the collector as insufficient are excluded from consideration, and they being the only evidence of nonimportation offered before the board, the protests are overruled.

United States General Appraisers, New York, April 6, 1922.

In the matter of protests 943014, etc., of Maltus & Ware et al. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Strauss & Hedges (*J. L. Klingaman* of counsel) for the importers.

William W. Hoppin, Assistant Attorney General (*Marcus Higginbotham*, special attorney), for the United States.

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Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers; WAITE, G. A., concurring).

ADAMSON, General Appraiser: In these two suits against the United States the importers seek to recover duties collected on certain merchandise claimed short in unexamined packages.

There was no oral testimony introduced, but the cases were submitted on the papers sent up in the record. The papers material to consider in these cases are the protests, the statements of the collector made to this board in replying to the protests when referring the papers to us, the affidavits rejected by the collector, and the reports of the discharging inspector.

From these papers in the record it appears that the packages were discharged in good order at the dock, that all the proofs required by amended Treasury regulation 608 were filed, except the papers described in requirement (*d*), providing that the demand on the shipper, if any, and the reply thereto be produced, and that the collector rejected the affidavits and assessed duty solely upon the ground that the application and reply thereto were not produced.

As the statement of one proposition as a reason for rejection in the statements of the collector excludes all other reasons, the consideration is narrowed down to the one reason stated—that the claim upon the shipper and answer thereto were not furnished. We conclude therefrom that he was fully satisfied on every other point and his rejection rested solely upon the omission stated, and we understand that if those papers had been furnished or accounted for he would have recognized and allowed the shortage.

The first question then for us to consider is, Did he do right in assessing duty for the sole reason that that demand and reply thereto were not produced? If he did right, he should not be reversed nor the protest sustained on that ground, but, if he was wrong, if those papers were actually produced, or if no such papers were in existence, of if the facts in the case rendered such an application and reply immaterial, or if we should hold that that part of the regulation was not really reasonable or material, then we ought to hold that the collector did wrong and sustain the protest on that ground.

Is that requirement reasonable? There is no doubt in our minds that, if the papers existed and were material with the other facts in the case, they would be of probative value in determining the decision of the collector as to whether the shortage occurred in transit or after arrival, or was not shipped at all. Therefore, we think the regulation reasonable and binding on the collector.

It is said there is no proof that any such papers existed or that they were material, considered with the other papers in the case. There being no evidence in the case, and nothing except the papers already enumerated, we could not determine that, even if it were

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lawful to do so. As we understand the law, those questions were concluded by the action of the collector. He expressly said "The claim upon the shipper." He is presumed to know before he acted whether such papers existed and whether or not they would elucidate the issue. With that presumption in his favor, and the opinion that the regulation is reasonable, we are unable to sustain the protests on that ground and thereby close the consideration of the case here.

The importer claims that he is entitled to a hearing on the issue of nonimportation generally, independent of what occurred before and by the collector under the regulations, and that is true. Although we are unable to sustain the collector in his action at the time, yet it is the duty of the board to hear evidence de novo on the claim of nonimportation and, if the evidence sustains the claim, grant it. But the only evidence offered before us on that issue consists of the same affidavits rejected by the collector, and the importer did not desire to offer any oral testimony on that issue. Government counsel objected to the consideration of those affidavits on that issue and the board sustained his objection, ruling on which, at the time, was reserved. It is well settled that, on the hearing of classification cases before the board, affidavits objected to by the other side can not be considered. The cases cited in the brief of the importer do not refer to affidavits of the kind offered in this way and objected to at the time.

Therefore the protests are overruled.

CONCURRING OPINION.

WAITE, General Appraiser: I think the protest should be overruled as unsupported, and therefore concur in the result.

(T. D. 39061—G. A. 8515.)

Shortage.

1. In this suit for refund of duty on account of shortage, the collector rejected the affidavits tendered because the importer did not file his affidavit, as required by subsection (*c*) and a copy of claim made on the shipper and reply thereto, required by subsection (*d*) of article 608 of the Treasury Regulations as amended. Action held to be correct.

2. The rejected affidavits sent up in the record by the collector were objected to before the board by Government counsel and excluded from consideration.

United States General Appraisers, New York, April 6, 1922

In the matter of protest 943012 of Manhattan Bead Chain Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Strauss & Hedges (*J. L. Klingaman* of counsel) for the importers.

William W. Hoppin, Assistant Attorney General (*Marcus Higginbotham*, special attorney), for the United States.

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Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers).

ADAMSON, General Appraiser: In the suit against the United States brought by the importer in this protest the importer seeks to recover the duty collected on 2 gross of pearl necklaces, size 45, out of case 13, alleged to have been short shipped.

The entry was made on the 27th of February, 1920, and the permit was dated on that day, though there is a stamped date of February 28, 11.43 a. m., and another stamped date, March 17, 1920.

There were eight cases of imitation pearl beads, and the return of the discharging inspector is that the packages arrived in good order, and there is no direct evidence to contradict that statement. The merchandise arrived by rail from the Pacific coast, where, on the arrival of the ship which brought them to our jurisdiction, they were immediately entered for transportation to New York without any evidence of irregularity, bad order, or shortage at that point.

Under the law duty attaches on the landing of merchandise. There is no particular express statute or regulation allowing shortage, but that is implied in the terms of the substantive law itself, which, in requiring duty on merchandise imported, is beyond all question limited in authority to collect to merchandise imported, and nothing else.

In recognition of that undoubted implied limitation, the Secretary of the Treasury has made, by authority, certain regulations. Those regulations prohibit the collector from allowing the claim of shortage unless certain affidavits are filed and certain timely notice given to him of the shortage.

Even the regulation does not declare that those affidavits filed shall absolutely prevail on the action of the collector unless they satisfy him by sufficient proof to overcome the evidence of discharge in good order. In this case there is no other evidence except the report of the inspector.

The collector rejected the claim of shortage because of the absence of any affidavit of the importer, owner, or ultimate consignee that the goods claimed short were not received by him or for his account and that he believes they were not imported, and the further absence of a copy of the claim, if any, made upon the shipper and the reply thereto.

This regulation is not in conflict with the statute nor the implication carried by the statute. It is entirely reasonable and easily capable of being complied with. We believe the collector acted entirely within the bounds of right and propriety in rejecting the claim of shortage on the grounds alleged.

It is further insisted by the importer that, regardless of the propriety of the collector's action, on appeal to the board, the board can determine the facts in the case and allow the shortage. That would

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be true if any evidence had been offered before the board, but there is nothing before the board but the uncontradicted entry of the discharging inspector. There is an affidavit of the drayman, that he carried the merchandise from the railroad pier on March 5, 1920, and delivered it to the importers, and that said case was not tampered with nor any of its contents abstracted while said case was in his possession. But there is no evidence to show what happened to the merchandise between February 28, when it was discharged, and March 5, when the drayman took it, nor what happened to the package between the time the drayman delivered it at the importers' place of business and the time it was examined by the clerk. There is an affidavit of a man, who swears he is an employee of the importer, that on the 5th of March he unpacked and checked off the contents of the case and discovered the shortage of 2 gross of pearl necklaces. He testifies that the shortage was not found packed in any other cases covered by the entry.

In the first place, the regulation does not authorize him to make that part of the affidavit nor does the language thereof comply with the language of the regulation.

But we are asked to try the case de novo and allow the shortage claimed. The affidavits already described were offered in evidence as a part of the record in the case. The Government's counsel formally objected to the consideration of those affidavits by us on a de novo investigation.

The board holds that in a trial before us in a classification case, affidavits are not admissible if objected to, so we must decline to consider them at all on this branch of the case. But if such affidavits were not objected to, and we could consider them, and nothing else were offered, the board would be compelled to hold, as the collector did, that the shortage was not established by the evidence.

The protest is overruled.

(T. D. 39062.)

Common carrier.

Approval of common carrier's bond.

TREASURY DEPARTMENT, *April 10, 1922.*

To Collectors of Customs and Others Concerned:

The common carrier's bond of the Crowell & Thurlow Steamship Co., operating as the C. & T. Intercoastal Line of Boston, Mass., dated March 30, 1922, was approved April 7, 1922, and has been filed with the collector of customs at Boston, Mass.

(110038.) ELMER DOVER, *Assistant Secretary.*

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(T. D. 39063.)

Joint regulations—Food and drugs act.

Joint regulations of the Department of Agriculture and the Treasury Department governing procedure on importations of goods subject to the food and drugs act of June 30, 1906.

TREASURY DEPARTMENT.

To Collectors of Customs, Officers of the Food and Drug Inspection Service, and Others Concerned:

1. The enforcement of the provisions of the food and drugs act of June 30, 1906, will, as a general rule, be under the local direction of the officers of the food and drug inspection stations of the Bureau of Chemistry, Department of Agriculture, collectors of customs acting as administrative officers in carrying out directions relative to the detention, exportation, and destruction of merchandise, and action under the bond in case of noncompliance with the provisions of the food and drugs act of 1906.

2. Merchandise subject to examination by representatives of the Department of Agriculture in accord with the provisions of the food and drugs act shall not be delivered to consignee prior to report of examination unless a bond has been given on the appropriate form prescribed in T. D. 37246 for the amount of the full invoice value of such goods, together with the duty thereon, and on refusal of the consignee to return such goods for any cause to the custody of the collector when demanded, for the purpose of excluding them from the country or for any other purpose, said consignee shall forfeit the full amount of the bond. Articles 470 and 473 of Customs Regulations, 1915, are amended accordingly.

3. As soon as samples are requested, and on that same day, a notice shall be sent by the collector or appraiser to the importer on Customs Form 6521 to the effect that samples have been taken and that the goods must be held intact pending a notice of the result of inspection and analysis, and in case of the failure of the goods to comply with the requirements of the food and drugs act that they must be returned to the collector for disposition. This notice will also contain a statement to the effect that samples will be paid for upon presentation of proper vouchers. At laboratory ports this notice in the collector's name must be prepared simultaneously with the request for samples and by the employee filling out the request; at nonlaboratory ports by the collector.

BULLETIN NOTICES.

4. From the above-described notices there shall be immediately prepared by the officer making out these notices a list, on combined Form C 788, of all entries of food and drug products from which samples have been requested, and this notice shall be posted daily in

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the customhouse over the collector's signature as a public notice to importers that goods must be held subject to examination until definite release is given in so far as the provisions of the food and drugs act are concerned.

A list shall also be prepared on Bureau of Chemistry Form C 786 by the chief of the food and drug inspection station of those invoices which have been stamped "No samples desired, Bureau of Chemistry, U. S. Dept. of Agriculture, per * * *". It shall be posted promptly each day on the official bulletin board most readily available to importers—preferably that of the collector or appraiser.

5. The chief of station shall send the collector a notice in duplicate when samples will be requested from every shipment of particular articles of food or drug. The collector, during the period over which such request is effective, shall keep continuously posted in the customhouse on his bulletin board one of the copies signed by him as an official notice for the benefit of importers, advising them that samples will be taken from all shipments of these articles and to the effect that if such goods are allowed to go into consumption, except as definite release is received from the chief of station and until after the provisions of the food and drugs act have been definitely complied with, they will be strictly held to the full penalty incurred under their penal bond given at time of entry. Combined Form C 787 shall be used. In such instances the usual notices regarding sampling individual shipments may be omitted as unnecessary.

6. As soon as the importer makes entry, the invoices covering foods and drugs and the public stores packages shall be made available, with the least possible delay, for inspection by the representative of the station. At the port of New York, or other ports where samples of certain free bulk goods are taken or examined on the docks by the station examiners, especial care shall be taken that the invoices covering the same be made immediately available, that notice regarding samples may be promptly sent.

NO VIOLATION—RELEASE.

7. As soon as examination of the samples is completed, if no violation of the act is detected, the chief of the station shall send a notice of release to the importer on Bureau of Chemistry Form "C 779–Release," a copy of this notice to be sent to the collector of customs for his information.

VIOLATION.

8. If a violation of the food and drugs act is disclosed, the chief of the station shall send to the importer due notice on Bureau of Chemistry Form "C 777–Importer, Date of Hearing," and at the same time to the collector similar notice, on Form "C 775–Collector, Detention," requesting him to refuse delivery of the goods or to

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require their return to customs custody if by any chance the merchandise was released without the bond, referred to in paragraph 2, being given.

9. If the importer does not reply to the notice of hearing in person or by letter within the time allowed on the notice, a second notice, Form C 777, marked "Second and Last Notice," shall be sent at once by the chief of the station, advising him that failure to reply will cause definite recommendation to the collector that goods be refused entry.

(a) *Rejected goods.*

10. In all cases where the goods are to be refused entry, the chief of the station within one day after hearing, or, if the importer does not appear or reply, within three days after second notice, shall notify the collector accordingly on Bureau of Chemistry Form "C 776–Collector, Statement of Violation" in duplicate. Collectors will file by laboratory serial number or entry number as most convenient.

11. Not later than one day after receipt of this notice the collector shall sign and transmit one of the copies to the importer, which shall serve as notification to the importer that the goods must be exported or destroyed within three months from such date, as provided by law; the other notice to be retained as office record and later returned as report to the chief of station. The importer shall in all cases return his notice to the collector, properly certified as to the information required, as the form provides, and it shall then be transmitted to the surveyor, or to the inspector where there is no surveyor.

(b) *Goods to be conditioned.*

12. If goods may be released after relabeling or after certain conditions are complied with, a notice shall be sent on Bureau of Chemistry Form C 776 by the chief of station direct to the importer, a carbon copy being sent to the collector. This notice must state specifically the conditions to be performed so as to bring the performance thereof under the provisions of the customs bonds on consumption and warehouse entries, these bonds including provisions requiring compliance with all of the requirements of the food and drugs act and all regulations and instructions issued thereunder. The notice will also state the officer to be notified by the importer when the goods are ready for inspection.

13. The importer must return the notice to the collector or chief of station, as designated, with the certificate thereon filled out stating that he has complied with the prescribed conditions and that the goods are ready for inspection at the place named.

14. This notice will be delivered to the inspection officer, who, after inspection, will indorse the result thereof on the back of the

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notice and return the same to the collector or the chief of the station, as the case may be.

15. When the conditions to be complied with are under the supervision of the chief of the station, and these conditions have been fully met, he shall release the goods to the importer, using Bureau of Chemistry Form "C 779–Release," sending a copy to the collector for his information.

When, however, release is still conditioned upon destruction of rejections or of some portion of the shipment or the importer has been unsuccessful in meeting the conditions imposed, and the goods must be exported or destroyed, the chief of station shall immediately notify the collector of the results of inspection, on Bureau of Chemistry Form C 776 in duplicate. The collector shall sign and immediately transmit one copy to the importer and proceed in the usual manner.

16. If the goods are detained subject to conditioning to be performed under the collector's supervision, the collector, as soon as conditions are performed, will notify the importer on Customs Form 6523 that the goods are released. If goods are not properly conditioned within the period allowed the goods must be exported or destroyed in accordance with the terms of the notice in C 776.

17. When final action has been taken on goods which have been refused entry or on goods release of which is subject to conditions to be performed under the collector's supervision, the collector shall send to the chief of station a notice of such final action, giving the date of release, destruction, or date of export and country to which exported, indorsed on Bureau of Chemistry Form C 776.

18. When intent to violate the act is evident, the privilege of relabeling, cleaning, and similar renovation will not be allowed. Similarly at the discretion of the station chief this privilege will not be allowed in those cases where through carelessness or otherwise shipments in violation of the act are offered for entry when the exporter or importer has been informed in connection with violations in previous shipments. In general when shipments with identical labeling have been detained for relabeling three times, the privilege of relabeling will not be extended.

19. When the privilege of sorting or renovating shipments is allowed, the importer must furnish satisfactory evidence as to the identity of the goods before release is given. This privilege shall not be granted except as stated conditions agreed to by the importer include segregation of goods at a stated place and apart from other goods of similar nature.

20. The chief of station or other officer by him appointed when it is deemed advisable, may require of the importer an affidavit as evidence that the goods have been properly disposed of, such affidavit

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to be executed before a notary public or other officer authorized to administer oaths generally.

21. When imported merchandise subject to the provisions of the food and drugs act is shipped to another port for reconditioning or exportation, the goods must be shipped under customs carrier's manifest, Customs Form 7512, in the same manner as shipments in bond.

22. Collectors of customs will perform the inspection service whenever goods are to be exported or destroyed, and in other cases when there is no officer of the station available.

23. Collectors of customs and representatives of the station will confer and arrange the apportionment of the inspection service according to local conditions. Officers of the station will, whenever feasible, perform the inspection service when cleaning, bringing up to standard and like reconditioning operations are involved.

PENALTIES.

24. In case of failure to comply with the instructions or recommendations of the chief of the station as to the conditions under which the merchandise may be disposed of, the collector shall notify the chief of the station in all cases coming to his attention within three days after inspection or after the expiration of the three months allowed by law if no action is taken.

25. The chief of the station upon receipt of the above-described notice, and in all cases of failure to meet the conditions imposed in order to comply with the provisions of the food and drugs act coming directly under his supervision, shall transmit to the collector of customs such evidence as he may have at hand tending to indicate the importer's liability and make a recommendation accordingly.

26. The collector, within three days of the receipt of this recommendation, whether favorable or otherwise, shall notify the importer that the legal period of three months for exportation or destruction having expired, action will be taken within 30 days to enforce the terms of the bond, unless in the meantime application for remission or mitigation of penalties incurred with definite offer of settlement is filed with the collector. The application should be in duplicate with a full statement of reasons under oath.

27. The collector shall transmit the application in duplicate, together with his own and the station chief's recommendation, both in duplicate, to the Secretary of the Treasury, Division of Customs, for his action.

NONLABORATORY PORTS.

28. At ports of entry where there is no laboratory of the Bureau of Chemistry, the collector or deputy, on the day when the first

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notice of expected shipment of foods or drugs is received either by invoice or entry, shall notify the chief of station in whose territory the port is located, on Bureau of Chemistry blue card Form "C 755–Notice from Collector Nonlaboratory Ports."

29. On day of receipt of card C 755, the station chief shall mail to the collector the yellow card "C 757–Notice to Collector Nonlaboratory Ports" if no sample is desired. This notice serves as an equivalent to stamping the invoices at laboratory ports with the legend "No samples desired. Bureau of Chemistry, U. S. Dept. of Agriculture."

30. If samples are desired, the station chief shall mail request on Bureau of Chemistry Form "C 783–Nonlaboratory Ports, Request for Samples."

31. The collector at once shall forward sample accompanied by Bureau of Chemistry Form "C 794–Label for Samples," supplied in tablets of 100, or if found mutually more satisfactory, on the larger Form "C 784–Imports, Description of Samples," which is used at laboratory ports for noting such data.

32. When samples will be requested from each shipment of certain foods or drugs, the chief of station shall furnish to collector and deputies at ports within the station's territory a list of such products, indicating size of sample necessary. Samples should then be sent promptly on arrival of goods, with Form C 784 or C 794, dispensing in such cases with use of request Forms C 755 and C 783.

33. Blank forms mentioned above, "C 755," "C 784," and "C 794–Label for Samples" tablets, will be supplied by the chief of station to the collectors or deputies located at ports within the station's territory.

34. In all other particulars the procedure shall be the same at nonlaboratory ports as at laboratory ports except that the time consumed in delivery of notices by mail shall be allowed for.

35. The station chief shall be deemed a customs officer in enforcing these regulations.

36. Customs Form 4609 is abolished.

A. W. Mellon,
Secretary of the Treasury.
Henry C. Wallace,
Secretary of Agriculture.
Herbert Hoover,
Secretary of Commerce.

Washington, D. C., *April 6, 1922.*

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(T. D. 39064.)

Customs Information Exchange.

The Comparative Valuation Report Bureau abolished and the Customs Information Exchange created in lieu thereof.

TREASURY DEPARTMENT, *April 14, 1922.*

To Customs Officials and Others Concerned:

1. The Comparative Valuation Report Bureau is hereby abolished, effective May 1, 1922.

2. In lieu thereof there is established a Customs Information Exchange, which will function under the direction of the Secretary of the Treasury.

3. The Customs Information Exchange will exercise no executive or administrative authority.

It will be used by the Secretary of the Treasury as a means of collecting, and distributing from a common center, data concerning values and advisory classifications, and such other information as will assist customs officers in the performance of their duties; such data shall be construed as advisory only and not controlling by customs officers in the appraisement and classification of merchandise.

4. The operation of the exchange will be under the direction of the Assistant Secretary in charge of revenues and the immediate supervision of the Director, Special Agency Service of the Customs. The exchange will be located at 641 Washington Street, New York, N. Y.; all correspondence to be addressed as follows: "Customs Information Exchange, 641 Washington Street, New York, N. Y."

5. The appraiser or acting appraiser at each port will forward to the Customs Information Exchange, at least once in three months, a report on Customs Cat. 6431–A of merchandise entered at his port. Only representative items of an importation should be reported.

6. Whenever an importation is entered showing new prices, or change in prices, a report thereof will be immediately sent to the Customs Information Exchange on Customs Cat. 6431–A.

7. All advances in values made by appraising officers will be immediately reported on Customs Cat. 6431–A to the Customs Information Exchange, giving a full statement of reasons for such advances.

8. Each report should cover only one class of merchandise from the same manufacturer or shipper, although various qualities of any one class should be included in one report, and where a number of unit items are to be carried forward to another sheet the continuation sheet (Customs Cat. 6431–B) should be used.

9. When samples are forwarded, the report relating thereto should be placed in the package containing them.

10. Reports should be made out in triplicate and should be typewritten.

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11. Invoices should not be submitted to the Customs Information Exchange unless absolutely necessary.

12. New price lists or copies of price lists obtained by appraising officers should be immediately forwarded to the Customs Information Exchange, with a statement as to discounts, plussages, date effective, deliveries, and other information relating to the appraisement of merchandise.

13. Reports on Customs Cat. 6431–A received by the Customs Information Exchange from ports outside of New York will be immediately referred to the New York appraiser, who will report as to the values at which similar or comparable merchandise is being appraised and advisorily classified at New York. If no similar or comparable merchandise has been entered at New York, the New York appraiser will reply to that effect without comment.

14. When reports received by the Customs Information Exchange show different values for similar or comparable merchandise than the value reported by the New York appraiser, the latter shall make a full statement setting forth the basis of the New York value.

15. Reports must be returned promptly by the New York appraiser to the Customs Information Exchange.

16. When reports on Customs Cat. 6431–A show differing values or conflicting advisory classification the sending port will advise the department of the final action taken by the local appraiser, together with the reason therefor, addressing this communication to the Secretary of the Treasury (Director, Special Agency Service, United States Customs, Room 2020, Interior Building, Washington, D. C.). A copy of such advice will be mailed by the local officer to the Customs Information Exchange.

17. All discrepancies in reports found by the Customs Information Exchange will be reported to the department.

18. The Customs Information Exchange will distribute to interested ports information indicating new values, including price lists, copies of reports of Treasury attachés and confidential agents abroad, and other advice relative to the value and classification of imported merchandise.

19. Appraising officers and other customs officers will report by letter to the special Treasury agent in charge of the local district all cases of undervaluation coming to their attention, a copy of the report in each instance being forwarded to the Customs Information Exchange, the information contained therein to be distributed by the exchange to other customs officers.

20. Appraising officers or special agents desiring an investigation relative to market value in foreign countries will submit the request to the department through the Customs Information Exchange for comparison with the records and information relative to the subject

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available in New York. If the information desired is not available in New York, request will be forwarded by the exchange to the Director, Special Agency Service, for action.

21. At Pacific coast ports and Honolulu when a case involving investigation of oriental values is urgent, the appraiser or special agent may send the request direct to the Treasury attaché in Japan or China, as the case may be, forwarding a copy thereof to the Secretary of the Treasury (Director, Special Agency Service) and a copy to the Customs Information Exchange.

22. Treasury attachés will address their original reports to the Secretary of the Treasury (Director, Special Agency Service), and in addition send three signed copies with exhibits direct to the Customs Information Exchange. Treasury attachés in Japan and China, when replying to requests submitted by an appraiser or special agent stationed at a Pacific coast port, or Honolulu, will send their original reports with exhibits to the officer making the request, at the same time send a copy to the Secretary of the Treasury (Director, Special Agency Service) and a copy to the Customs Information Exchange. Special agents making investigations as to market values in Canada will address their reports to the department, sending two signed copies of each report to the Customs Information Exchange. All price lists obtained by these officers will be sent direct to the Customs Information Exchange, a copy of the transmitting letter being forwarded to the department (Director, Special Agency Service).

23. All duties heretofore assigned to the Comparative Valuation Report Bureau under the provisions of T. D. 38742, June 14, 1921, and T. D. 38927, December 2, 1921, will be performed until further notice by the Customs Information Exchange.

24. T. D. 36955, January 29, 1917, is hereby amended to provide that the appraisement appeal reports (Customs Cats. 6449-A, 6449-B, 6449-C) will be forwarded by appraising officers to the Customs Information Exchange for the purpose of having added any additional information there available relative to the case, the document to be thence transmitted to the office of the Assistant Attorney General in charge of customs, 641 Washington Street, New York, N. Y.

25. T. D. 31936, T. D. 35076, T. D. 36359, T. D. 36634, T. D. 36684, T. D. 36806, T. D. 37310, T. D. 37445, T. D. 38193, T. D. 38650, and articles 591 to 594, inclusive, of the Customs Regulations of 1915, and all other Treasury decisions, circulars, letters, and parts thereof, and all orders or instructions issued by any office, division, or bureau of the department in conflict with or repugnant to the provisions of this Treasury decision, are hereby revoked.

A. W. MELLON,
Secretary of the Treasury.

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(T. D. 39065—G. A. 8516.)

Sufficiency of protest—Amber beads.

A protest against the assessment of duty at 50 per cent on certain pieces of amber does not raise an issue where the only merchandise described as amber consists of amber beads loosely strung, classified at 35 per cent ad valorem under paragraph 333, tariff act of 1913, and amber clasps classified as manufactures of amber at 10 per cent under paragraph 367. United States v. Wanamaker (175 Fed. 900; T. D. 30385) followed.

United States General Appraisers, New York, April 12, 1922.

In the matter of protest 938564 of D. Lisner & Co. against the assessment of duty by the collector of customs at the port of New York.

[Protest dismissed.]

Comstock & Washburn (*H. J. Rode* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Charles D. Laurence*, special attorney), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers; Brown, G. A., dissenting).

Sullivan, General Appraiser: The applicable portion of this protest reads as follows:

Hon. Collector of Customs, Port of New York, Sir: Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation of duties, and your decision assessing duty under the tariff act of October 3, 1913, at 50 per cent on certain pieces of amber. Said merchandise is not dutiable as assessed. It is dutiable at only 10 per cent under Par. 367 as a manufacture of amber. If not dutiable as aforesaid it is dutiable at only 20 per cent under Par. 357 or at 35 per cent under Par. 333. * * *

Then follows a claim against the assessment of 50 per cent on certain loosely strung beads.

An inspection of the invoices covered by this protest discloses that the collector did not assess duty at 50 per cent ad valorem on certain pieces of amber. The only amber merchandise invoiced is the first and second items on invoice 4150 with entry 143798, viz, "2 doz. amber beads on strings, 3013, 50/300" and "2 doz. clasps separately." The former were returned by the appraiser, as indicated by red ink on the invoice, as "Beads loosely strung for facility in transportation only 35 per cent, par. 333," and the latter as "Mf. amber 10 per cent F. R."

At the trial of this protest the following took place:

Mr. Rode (protestants' counsel). I think we will stipulate that the merchandise described as amber beads assessed at 35 per cent consists of amber beads the same as those involved in G. A. 8469 (American Bead Co's. case, T. D. 38883).

Mr. Lawrence (Government counsel). That is, you limit your claim to those?

Mr. Rode. We limit our claim to those.

Mr. Lawrence. No objection.

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Mr. RODE. I move the incorporation of the record in said G. A. 8469 and submit.

Mr. LAWRENCE. No objection, and the Government submits.

General Appraiser McCLELLAND. The record will be incorporated and the case marked submitted.

We have set out the entire record.

The appraiser's answer raises a question as to the sufficiency of this protest. The report of the appraiser is in fact an answer to the protest, as it states on its face, or a pleading. This answer is as follows:

This protest is against the assessment of duty at 50% ad valorem on certain pieces of amber and loosely strung beads. The only merchandise described as amber consists of beads loosely strung for facility in transportation only, and amber clasps, and were returned for duty at 35% ad valorem under par. 333, and as a manufacture of amber at 10% under par. 367, act of 1913. The merchandise returned for duty at 50% ad valorem consists of neck chains composed in chief value of beads and women's handbags of cotton, silk, or other foundation ornamented with beads, the beads chief value. It was all returned for duty as articles in chief value of beads at 50% under par. 333, act of 1913.

Inasmuch as the protestants have limited their claim to amber beads, we need not consider the amber clasps and the articles in chief value of beads mentioned in the above report.

Have we, as shown by this record, any fact to disprove the action of the collector as stated in the protest?

The protest in its opening clause declares it is against the collector's assessment of 50 per cent on certain pieces of amber, not 35 per cent, and alternatively claims said merchandise dutiable under paragraph 367, 357, or 333. The answer to the protest, as above set forth, discloses that the only merchandise described as amber consists of beads loosely strung for facility in transportation only, returned for duty at 35 per cent ad valorem, and amber clasps returned as a manufacture of amber at 10 per cent under paragraph 367.

It will be observed there is not a single article of amber that has been returned for duty at 50 per cent ad valorem. The protest being against amber pieces assessed at 50 per cent does not raise an issue; we have not such merchandise before us.

As shown by the protest and the answer thereto certain merchandise (not amber) was assessed with duty at 50 per cent, consisting of neck chains, composed in chief value of beads, and women's handbags of cotton, silk, or other foundation ornamented with beads, the beads chief value, but protestants by limiting their claim to amber beads, assessed at 35 per cent, have waived any right they may have had as to these particular articles.

Paragraph N, Section III, of the act of 1913, states the protest shall be filed "in writing with the collector, setting forth therein distinctly and specifically, and in respect to each entry or payment, the reasons for his (importer's) objections thereto * * *."

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His objection to the assessment of duty at 50 per cent on certain pieces of amber can not be sustained, as such merchandise does not appear on the invoices accompanying entry 143798, being the entry in question. The objection in the protest against the collector's "assessment of 50 per cent on certain loosely strung beads" can not be sustained on account of the protestant's limitation of the protest to amber beads, as we have before indicated.

The record does not disclose that the Government made objection to the sufficiency of the protest. Even if such objection was not made, the answer to the protest raises the question squarely, and we can not, in the light of the answer, disregard that question, as we are without any fact to indicate that the merchandise assessed at 50 per cent ad valorem consisted of amber pieces. In fact, the merchandise under consideration was not assessed at 50 per cent.

The record incorporated, G. A. 8469, supra, is, therefore, not of any assistance to us.

Numerous authorities can be cited holding unquestionably the necessity of the protest clearly and distinctly setting out the specific item to the classification of which by the collector objection is made.

In United States *v.* Wanamaker (175 Fed., 900; T. D. 30385) a very pertinent suggestion is made by the Circuit Court of Appeals when the court states as an invaluable maxim: "Before you begin to apply the law, settle your facts."

The fact is unmistakably settled in the case at bar; there were not any amber pieces on the invoices covered by the entry in question assessed with duty at 50 per cent ad valorem, and the merchandise that was assessed at 50 per cent ad valorem was not amber pieces but merchandise in which beads were the component material of chief value.

In the Wanamaker case, supra, the protest was against the payment of duty at the rate of 60 per cent ad valorem on hats made from so-called artificial silk. It was held it could not apply to hats made from real horsehair.

In this case we could not reverse the action of the collector, as the protest places in issue but one part of his action, viz, the assessment of duty at 50 per cent ad valorem on certain loosely strung beads, and by limiting his claim at the hearing to amber beads assessed at 35 per cent ad valorem, the protestant has waived this portion of the protest.

The protest is dismissed.

DISSENTING OPINION.

Brown, General Appraiser: I think the protest should be sustained. In the case of Queen *v.* United States (G. A. 933; T. D. 12020; G. A. Dec. 1891, Vol. II, p. 1406) the protest was against

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the assessment of duty at 45 per cent for goods in fact assessed at 60 per cent. The goods being properly described this misstatement of the assessment was held not to deceive the collector or to vitiate the protest.

United States *v.* Wanamaker (175 Fed., 900; T. D. 30385) is not in point. There the rate of assessment for goods correctly described was not incorrectly stated, but it was attempted to raise an issue on hats made of "horsehair" upon a protest made as to hats made of "artificial silk," which manifestly could not be done.

(T. D. 39066.)

Foreign currencies—Rates of exchange.

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), emergency tariff act of May 27, 1921.

TREASURY DEPARTMENT, *April 22, 1922.*

To Collectors of Customs and Others Concerned:

The appended table of the values of certain foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), act of May 27, 1921, during the period from April 7 to April 20, 1922, both inclusive, is published for the information of collectors of customs and others concerned.

(103512.) ELMER DOVER, *Assistant Secretary.*

Values of foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), *emergency tariff act of May 27, 1921.*

PERIOD APRIL 7 TO 13, 1922, INCLUSIVE.

Country.	Name of currency.	Apr. 7.	Apr. 8.	Apr. 10.	Apr. 11.	Apr. 12.	Apr. 13.
Europe:							
Austria	Krone	$0.000135	$0.000135	$0.000135	$0.000136	$0.000137	$0.000136
Belgium	Franc	.0845	.0848	.0855	.0853	.0856	.0857
Bulgaria	Lev	.006883	.006867	.006867	.006867	.006883	.006867
Czechoslovakia	Krone	.019233	.019353	.019694	.020392	.020158	.020094
Denmark	do	.2116	.2121	.2127	.2124	.2124	.2126
England	Pound sterling	4.3957	4.4092	4.4211	4.4124	4.4181	4.4153
Finland	Markka	.019138	.0191	.019213	.019213	.018775	.01895
France	Franc	.0913	.0916	.0924	.0921	.0925	.0928
Germany	Reichsmark	.003264	.003235	.003425	.003560	.00339	.003359
Greece	Drachma	.0445	.0447	.0449	.0449	.0448	.0452
Holland	Florin or guilder	.3780	.3785	.3790	.3785	.3791	.3795
Hungary	Krone	.001163	.001175	.001193	.001257	.001286	.001296
Italy	Lira	.0528	.0533	.0542	.0536	.0544	.0543
Norway	Krone	.1820	.1829	.1841	.1855	.1857	.1861
Poland	Polish mark	.000252	.00026	.000252	.000264	.000267	.000265
Portugal	Escuda	.0811	.0811	.0810	.0801	.0801	.0805
Rumania	Leu	.007144	.007206	.007363	.007588	.007591	.007591
Serbia	Dinar	.012343	.012457	.012543	.012671	.013236	.013086
Spain	Peseta	.1549	.1555	.1556	.1551	.1553	.1554
Sweden	Krona	.2610	.2614	.2617	.2615	.2610	.2604
Switzerland	Franc	.1944	.1946	.1946	.1944	.1944	.1944
Yugoslavia	Krone	.003086	.00311	.003133	.003171	.003324	.003286

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Values of foreign currencies, etc.—Continued.

PERIOD APRIL 7 TO 13, 1922, INCLUSIVE—continued.

Country.	Name of currency.	Apr. 7.	Apr. 8.	Apr. 10.	Apr. 11.	Apr. 12.	Apr. 13.
Asia:							
China	Chefoo tael	$0.7650	$0.7650	$0.7650	$0.7642	$0.7592	$0.7667
Do	Hankow tael	.7650	.7650	.7650	.7642	.7592	.7667
Do	Shanghai tael	.7313	.7304	.7296	.7307	.7279	.7311
Do	Tientsin tael	.7700	.7692	.7700	.7700	.7642	.7708
Do	Hongkong dollar	.5400	.5404	.5411	.5439	.5446	.5448
Do	Mexican dollar	.5330	.5320	.5330	.5325	.5340	.5342
Do	Tientsin or Peiyang dollar.	.5508	.5508	.5517	.5500	.5483	.5508
Do	Yuan dollar	.5442	.5475	.5450	.5450	.5467	.5467
India	Rupee	.2780	.2778	.2789	.2787	.2775	.2779
Japan	Yen	.4745	.4738	.4735	.4732	.4731	.4736
Singapore (S. S.)	Dollar	.4958	.4983	.5008	.5000	.5008	.5000
North America:							
Canada	do	.973333	.977882	.979458	.976111	.975625	.975517
Cuba	Peso	.998516	.9985	.998125	.998251	.9980	.998125
Mexico	do	.494125	.494925	.4950	.494875	.495375	.494625
Newfoundland	Dollar	.972188	.976485	.976719	.974219	.972656	.973164
South America:							
Argentina	Peso (gold)	.7924	.8029	.8051	.8078	.8098	.8113
Brazil	Milreis	.1354	.1363	.1357	.1355	.1353	.1360
Uruguay	Peso	.7697	.7737	.7776	.7779	.7752	.7689

PERIOD APRIL 14 TO 20, 1922, INCLUSIVE.

Country.	Name of currency.	Apr. 14.	Apr. 15.	Apr. 17.	Apr. 18.	Apr. 19.	Apr. 20.
Europe:							
Austria	Krone	$0.000135	$0.000135	$0.000135	$0.000135	$0.000134	$0.000133
Belgium	Franc	.0857	.0857	.0862	.0859	.0858	.0857
Bulgaria	Lev	.006867	.0069	.006917	.00695	.00695	.0069
Czechoslovakia	Krone	.020053	.02005	.0201	.020097	.020017	.019872
Denmark	do	.2127	.2127	.2128	.2130	.2123	.2122
England	Pound sterling	4.4156	4.4164	4.4219	4.4162	4.4188	4.4183
Finland	Markka	.018814	.01915	.01905	.019038	.018888	.0188
France	Franc	.0928	.0929	.0934	.0931	.0931	.0931
Germany	Reichsmark	.003373	.003414	.003642	.003442	.003484	.003524
Greece	Drachma	.0448	.0449	.0447	.0449	.0447	.0447
Holland	Florin or guilder	.3793	.3793	.3796	.3796	.3793	.3795
Hungary	Krone	.001289	.001289	.001303	.001276	.001288	.001288
Italy	Lira	.0545	.0545	.0549	.0546	.0545	.0542
Norway	Krone	.1875	.1870	.1875	.1891	.1909	.1896
Poland	Polish mark	.000264	.000265	.000267	.000258	.000263	.000263
Portugal	Escuda	.0805	.0808	.0803	.0799	.0782	.0775
Rumania	Leu	.007516	.007522	.007453	.007522	.007445	.007447
Serbia	Dinar	.013093	.013286	.013214	.013071	.013171	.013236
Spain	Peseta	.1553	.1554	.1556	.1556	.1556	.1555
Sweden	Krona	.2608	.2607	.2608	.2599	.2594	.2599
Switzerland	Franc	.1944	.1945	.1945	.1946	.1946	.1945
Yugoslavia	Krone	.003296	.003315	.003322	.003269	.003289	.003299
Asia:							
China	Chefoo tael	.7667	.7667	.7633	.7700	.7833	.7842
Do	Hankow tael	.7667	.7667	.7633	.7700	.7833	.7842
Do	Shanghai tael	.7321	.7323	.7295	.7363	.7479	.7492
Do	Tientsin tael	.7708	.7708	.7667	.7742	.7850	.7875
Do	Hongkong dollar	.5450	.5471	.5408	.5450	.5543	.5514
Do	Mexican dollar	.5335	.5335	.5313	.5360	.5430	.5460
Do	Tientsin or Peiyang dollar.	.5492	.5508	.5500	.5542	.5567	.5592
Do	Yuan dollar	.5475	.5475	.5467	.5508	.5533	.5525
India	Rupee	.2776	.2782	.2796	.2780	.2785	.2781
Japan	Yen	.4733	.4738	.4732	.4732	.4737	.4737
Singapore (S. S.)	Dollar	.5017	.5000	.5000	.5008	.5000	.5000
North America:							
Canada	do	.975859	.976969	.977569	.976875	.97625	.977344
Cuba	Peso	.998281	.997969	.998125	.998125	.998063	.997689
Mexico	do	.494375	.49375	.494219	.495775	.495025	.49545
Newfoundland	Dollar	.973958	.974805	.975313	.973906	.974375	.975625
South America:							
Argentina	Peso (gold)	.8096	.8104	.8101	.8086	.8070	.8049
Brazil	Milreis	.1352	.1356	.1350	.1357	.1355	.1354
Uruguay	Peso	.7745	.7716	.7761	.7879	.7855	.7864

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(T. D. 39067.)

Antidumping act, 1921—Finding by the Secretary of the Treasury.

The Secretary of the Treasury makes finding under section 201 (*a*), antidumping act, 1921, of dumping in the case of sheathing paper from British Columbia.

TREASURY DEPARTMENT, *April 18, 1922.*

To Collectors of Customs and Others Concerned:

Section 201 (*a*) of the antidumping act, 1921, provides as follows:

SEC. 201. (*a*) That whenever the Secretary of the Treasury (hereinafter in this act called the "Secretary"), after such investigation as he deems necessary, finds that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation into the United States of a class or kind of foreign merchandise, and that merchandise of such class or kind is being sold or is likely to be sold in the United States or elsewhere at less than its fair value, then he shall make such finding public to the extent he deems necessary, together with a description of the class or kind of merchandise to which it applies in such detail as may be necessary for the guidance of the appraising officers.

After due investigation I find that the industry of making sheathing paper in the United States is being or is likely to be injured by reason of the importation into the United States of sheathing paper from British Columbia and that such merchandise is sold or is likely to be sold in the United States at less than its fair value.

(106085.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39068.)

Classification of glass—Date extended.

Date on which T. D. 39039 of March 16, 1922, was to become effective extended 30 days.

TREASURY DEPARTMENT, *April 18, 1922.*

To Collectors and Other Officers of the Customs:

The date on which the instructions contained in T. D. 39039 of March 16, 1922, relating to a change in classification of glass imported in various forms was to become effective is hereby extended 30 days.

The instructions contained in the said decision will therefore not become effective until 60 days after the date thereof.

(95620.) ELMER DOVER, *Assistant Secretary.*

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(T. D. 39069.)

Travel regulations.

[Circular No. 127[1].]

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, March 29, 1922.

To Officers and Employees of the Treasury Department and Others Concerned:

The following provisions of law governing reimbursement of traveling expenses are published for the information of those concerned:

ONLY ACTUAL TRAVELING EXPENSES ALLOWED.

Provided, That hereafter only actual traveling expenses shall be allowed to any person holding employment or appointment under the United States, except marshals, district attorneys, and clerks of the courts of the United States and their deputies; and all allowances for mileages and transportation in excess of the amount actually paid, except as above excepted, are hereby declared illegal; and no credit shall be allowed to any of the disbursing officers of the United States for payment or allowances in violation of this provision. (Act Mar. 3, 1875, 18 Stat. 452.)

ACTUAL EXPENSES FOR SUBSISTENCE LIMITED TO $5 PER DAY.

On and after July first, nineteen hundred and fourteen, unless otherwise expressly provided by law, no officer or employee of the United States shall be allowed or paid any sum in excess of expenses actually incurred for subsistence while traveling on duty outside of the District of Columbia and away from his designated post of duty, nor any sum for such expenses actually incurred in excess of $5 per day; nor shall any allowance or reimbursement for subsistence be paid to any officer or employee in any branch of the public service of the United States in the District of Columbia unless absent from his designated post of duty outside of the District of Columbia, and then only for the period of time actually engaged in the discharge of official duties. (Act Apr. 6, 1914, 38 Stat. 318.)

PER DIEM IN LIEU OF SUBSISTENCE MAY BE AUTHORIZED.

That the heads of executive departments and other Government establishments are authorized to prescribe per diem rates of allowance not exceeding $4 in lieu of subsistence to persons engaged in field work or traveling on official business outside of the District of Columbia and away from their designated posts of duty when not otherwise fixed by law. (Sec. 13, act Aug. 1, 1914, 38 Stat. 680.)

TRAVEL REGULATIONS.

The following regulations governing travel under this department are promulgated, effective on and after April 15, 1922. The field force of the Bureau of Internal Revenue is specifically excepted from these regulations.

ORDERS FOR TRAVELING.

(1) Unless otherwise provided by law or special authorization, all orders for travel to be performed in the transaction of the public

[1] This edition supersedes the last edition of December 4, 1918.

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business of the Treasury Department shall be signed by the Secretary, the Undersecretary, or an Assistant Secretary.

ONLY NECESSARY EXPENSES ALLOWABLE.

(2) Persons traveling upon official business of this department are required to exercise the same care in incurring expenses as a prudent person would exercise if traveling on personal business. They will be allowed their actual and necessary traveling expenses, usual and essential to the ordinary comfort of travelers, not exceeding the amounts specified in paragraphs 3 to 19, inclusive, of this circular, except where mileage or per diem in lieu of subsistence has been authorized.

TRANSPORTATION EXPENSES.

(3) *Fares.*—Actual fares on railroads, steamboats, and other conveyances by the shortest practicable route (see par. 24); street car, omnibus, transfer coach; cab or hack hire to and from post of duty, railway stations, wharves, and hotels when use of street car is not practicable and statement is made in the account showing the necessity for the use; the hire of special transportation where there are no regular means of conveyance (see par. 25); sleeping-car fare for one double berth for each person (see par. 26), or a full section or other accommodations when specially authorized; or customary stateroom accommodations on steamboats or other vessels (see par. 27); or one seat in a parlor or chair car.

(4) *Baggage.*—Transfer of baggage between post of duty or hotel and railway station or wharf.

(5) *Extra baggage.*—Charges for "extra baggage" will be allowed when the extra weight arises from transporting public property or private property to be used for public purposes. Such charges must be fully explained. Receipt showing weight and rate of such baggage should be furnished.

(6) *Fees to baggagemen, etc.*—Fees to baggagemen and to porters on arrival at and departure from hotels, depots, and wharves or landings, not exceeding 25 cents; checking baggage at hotels or station parcel rooms, not exceeding 10 cents for each piece, number of pieces checked to be shown in each case.

(7) *Fees to porters.*—Fees to porters on sleeping cars and parlor or chair cars, amount actually paid, subject to a limitation of 25 cents for each night of travel or for each trip of 24 hours or less.

(8) *Fees to stewards and others on steamers.*—Customary fees to stewards and others on steamers as follows: For an ocean trip of 10 days or less, not exceeding $10; for an ocean trip of more than 10 days' duration, not exceeding $1 per day; on coastwise steamers, not

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exceeding 50 cents per day; rent of steamer chair, not exceeding $2. Fees to dining-room stewards and waiters must be included as a part of the maximum daily allowance for subsistence. Fees to porters and cabin or deck stewards on such vessels will be allowable as expenses of transportation.

(9) *Own conveyance.*—Charges for use of own conveyance will not be allowed as travel expense in the accounts of any officer or employee. Charges for such necessary incidental expenses incurred in connection with use of own conveyance as are readily ascertainable—as for gasoline, oil, or horse feed used on trip in the vicinity in which stationed—will be allowed, but only to the extent of the actual cost thereof. A commuted rate charge will not be allowed in any case.

SUBSISTENCE EXPENSES.

(10) *Subsistence.*—This includes all expenses for lodging, meals, baths, laundry, pressing clothes, fees to waiters, fees to maids, fees to bell boys, and transportation charges incident to procuring subsistence. The law limits the total reimbursement for subsistence to $5 in any one day.

(11) The account must be so stated that the expenses incident to each day may be identified. The amount expended for each item under the head of subsistence must be stated separately. Where meals are paid for separately the amount paid for each should be stated. Expense of laundering and pressing clothes may be prorated for the number of days which it covers; but the days covered shall be specifically stated.

(12) For the purpose of computing actual expenses of subsistence or per diem in lieu of subsistence the day will be considered as running from midnight to midnight. A charge for room or lodging will be considered as an expense of the day in which the night for which the room or lodging was procured began.

(13) *Per diem in lieu of subsistence.*—Under the provisions of the act of August 1, 1914, above quoted, a per diem in lieu of subsistence can only be fixed by the Secretary, the Undersecretary, or an Assistant Secretary. Such per diem must be fixed in advance of the travel, either by general orders applying to particular classes or by special orders in individual cases. A per diem in lieu of subsistence covers all the items of expense enumerated in paragraph 10. Transportation charges between an employee's habitation and post of duty, in obtaining meals or lodging, are not allowed where a per diem in lieu of subsistence is granted.

(14) In case absence from official station involves part of a day the per diem for that day shall be as follows:

(*a*) No per diem will be allowed when such absence is for three hours or less.

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(*b*) A per diem of $2 will be allowed when such absence is for more than three and not more than six hours.

(*c*) A per diem of $3 will be allowed when such absence is for more than six hours and not more than 12 hours.

(*d*) A per diem of $4 will be allowed when the absence is for more than 12 hours.

(*e*) The calendar day will be the unit.

INCIDENTAL EXPENSES.

(15) *Telegrams.*—Telegrams sent or received on official business where paid for must be at Government rates, and copies of telegrams must be furnished, unless of a confidential nature, in which case the points between which sent and number of words must be stated. All telegrams, except those of a nature sufficiently urgent to demand immediate attention, should be filed for transmission as night messages at night rates.

(16) *Telephones.*—Charges for telephone service on official business will be allowed provided that if long distance a statement is furnished of places to and from which service was rendered and the time occupied.

(17) *Tax on telegraph or telephone messages.*—Expenses incurred by officers and employees of the United States incident to the sending of telegraph, telephone, or radio messages on official business are exempt from the internal-revenue tax. In case of a telegraph or radio message, the officer or employee signing such message should certify thereon that it is on account of official business and not sent for private purposes.

(18) *Reports.*—When properly authorized, expenses for stenographic and typewriting services in connection with the preparation of reports or correspondence (but not for the preparation of vouchers) will be allowed, when incurred and paid away from post of duty and while traveling on official business of the department.

(19) *Excess fares.*—Maximum allowances for fares contemplated by this circular are for first-class limited transportation on railroads and steamboats. Charges for passenger transportation at excess-fare rates will not be allowed unless the explanation regarding the use of such train satisfies the department that the good of the service required that the travel be performed in that manner. If travel on an excess-fare train is obtained, the excess fare must be paid by the traveler in cash, and his voucher submitted for reimbursement, with explanation, to the administrative office.

GENERAL INSTRUCTIONS.

(20) *Vouchers.*—No account for traveling expenses will be paid unless rendered upon approved forms, properly itemized, verified by affidavit, accompanied by necessary subvouchers, approved by the Secretary, the Undersecretary, or one of the Assistant Secretaries, or

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other duly authorized official, and accompanied by a copy of the travel order.

(21) *Receipts.*—Receipts are not required to support charges for railroad or steamboat fares, transportation of baggage between post of duty, depots, wharves, and hotels, fees, telegrams, meals paid for separately, or other similar expenses.

For all other expenses incurred, such as hotel bills, laundry, pressing clothes, excess baggage (weight to be shown), typewriting reports, and special conveyances, receipts shall be taken unless impracticable to do so, the failure to be explained on the travel voucher. The mere convenience of the officer or agent of the Government in the matter of taking receipts, however, is not to be considered. Duplicate subvouchers are not permitted.

(22) *Oath to account.*—Attention is invited to section 8 of the sundry civil appropriation act, approved August 24, 1912 (37 Stat. 487), as follows:

SEC. 8. After June thirtieth, nineteen hundred and twelve, postmasters, assistant postmasters, collectors of customs, collectors of internal revenue, chief clerks of the various executive departments and bureaus, or clerks designated by them for the purpose, the superintendent, the acting superintendent, custodian, and principal clerks of the various national parks and other Government reservations, superintendent, acting superintendents, and principal clerks of the different Indian superintendencies or Indian agencies, and chiefs of field parties, are required, empowered, and authorized, when requested, to administer oaths, required by law or otherwise, to accounts for travel or other expenses against the United States, with like force and effect as officers having a seal; for such services when so rendered, or when rendered on demand after said date by notaries public, who at the time are also salaried officers or employees of the United States, no charge shall be made; and on and after July first, nineteen hundred and twelve, no fee or money paid for the services herein described shall be paid or reimbursed by the United States.

The law above quoted prohibits the payment for jurat to expense vouchers, and, if payment is made, reimbursement will not be allowed.

(23) *Itemization of vouchers.*—The vouchers shall be fully itemized, showing the date each item of expense was incurred, the day and hour of departing from and arriving at official station, and the names of the places visited, with the day and hour of arrival at and departure therefrom. The memorandum at the bottom of the voucher showing travel performed upon transportation requests should be correctly and completely filled out when such requests are used.

(24) *Delay in travel.*—Stopping over at any point, or any detention en route, or any deviation from the shortest usually traveled route, not provided for in the instructions, involving expense to the United States, must be satisfactorily explained. Per diem in lieu of subsistence or actual expense for meals and lodging while on sick leave will not be allowed.

(25) *Special conveyance.*—The necessity therefor should be shown and the subvoucher for hire thereof should describe the kind of con-

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veyance, as "horse and buggy," "automobile and driver," etc., and mention the starting point, points visited, distance traveled, and dates included.

(26) *Sleeping-car fare.*—The kind of berth actually obtained, as "upper" or "lower," must be stated. Berths obtained in a tourist sleeper must be described as such. When using transportation requests for sleeping-car accommodations, the traveler must describe on the face thereof the kind of berth obtained. (See "Receipts," 21.)

(27) *Stateroom accommodations* on vessels will be allowed only when the fare for transportation does not include berth. The name of the steamboat or other vessel and the number of the stateroom must be stated on the voucher, or, when a transportation request is used, on the face of the request. Unless orders so state, expense of travel on steamer instead of rail will not be allowed.

(28) *Freight and express charges.*—No reimbursement should be claimed in a travel voucher for freight or express charges. Such shipments should be made on Government bills of lading which the consignee accomplishes upon receipt of the goods and surrenders to the agent, who will collect charges through his general office in the usual manner.

(29) *Transportation requests* to obtain rail and water transportation should be used in every instance where practicable. They should not be used for excess fares.

(30) *Refunds.*—Under no circumstances shall an employee attempt to secure a refund from a transportation company for the unused portion of a ticket obtained in exchange for a transportation request; the unused portion of such ticket must be forwarded to the administrative office with a full explanation at the earliest practicable date.

(31) *Transportation at round-trip or other special rates.*—Every officer and employee shall exercise care and judgment in the purchase of transportation. Efforts shall be made by travelers to take advantage of reduced rates for round trips when applicable to the travel to be performed; or of any special rates for first-class transportation, effective on the day of purchase. Whenever transportation is purchased at round-trip or other special rates the voucher must so indicate.

(32) *Administrative examination and approval of vouchers.*—Administrative officers are directed to make a thorough examination of each voucher before passing it for payment and to approve only such items of expense as are satisfactorily shown to have been necessarily incurred as well as to be just and reasonable in amount.

(33) This circular supersedes Department Circular No. 127, dated December 4, 1918, and all regulations in conflict herewith are hereby revoked.

A. W. Mellon,
Secretary of the Treasury.

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(T. D. 39070.)

Special Agency Service, United States Customs—Investigations in Dominion of Canada.

TREASURY DEPARTMENT, *April 25, 1922.*

To Special Agents and Other Customs Officials:

Effective May 1, 1922, customs investigations in the Dominion of Canada shall be made by officers of the Special Agency Service as follows:

First. Investigations in the Dominion of Canada east of a line drawn along the east bank of the Richelieu River to its confluence with the St. Lawrence River and thence along the 73d meridian of longitude shall be made by officers attached to the First Special Agency District.

Second. Investigations in the Dominion of Canada west of the above lines and east of the 77th meridian of longitude shall be made by officers attached to the Second Special Agency District.

Third. Investigations in Canada west of the 77th meridian of longitude and east of the 80th meridian shall be made by officers attached to the Third Special Agency District.

Fourth. Investigations in Canada west of the 80th meridian of longitude and east of the 85th meridian shall be made by officers attached to the Eleventh Special Agency District.

Fifth. Investigations in Canada west of the 85th meridian of longitude and east of the 104th meridian shall be made by officers attached to the Thirteenth Special Agency District.

Sixth. Investigations in the Dominion of Canada west of the 104th meridian of longitude shall be made by officers attached to the Fourteenth Special Agency District.

Necessary travel by officers of the Special Agency Districts specified, within the respective areas described, will be approved when made as the result of assignment or reference of investigations by the department. Otherwise, travel in these areas without previous department authority will be approved only when urgent necessity is shown and a full explanation submitted. Whenever practicable, journeys in Canada not made incident to investigations previously referred by the department must first be approved by the Director, Special Agency Service.

ELMER DOVER, *Assistant Secretary.*

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(T. D. 39071.)

Antidumping act, 1921—Finding by the Secretary of the Treasury.

The Secretary of the Treasury makes finding under section 201 (*a*), antidumping act, 1921, of dumping in the case of wheat flour from Canada.

TREASURY DEPARTMENT, *April 22, 1922.*

To Collectors of Customs and Others Concerned:

Section 201 (*a*) of the antidumping act, 1921, provides as follows:

SEC. 201. (*a*) That whenever the Secretary of the Treasury (hereinafter in this act called the "Secretary"), after such investigation as he deems necessary, finds that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation into the United States of a class or kind of foreign merchandise, and that merchandise of such class or kind is being sold or is likely to be sold in the United States or elsewhere at less than its fair value, then he shall make such finding public to the extent he deems necessary, together with a description of the class or kind of merchandise to which it applies in such detail as may be necessary for the guidance of the appraising officers.

After due investigation I find that the industry of making wheat flour in the United States is being or is likely to be injured by reason of the importation into the United States of wheat flour from Canada and that such merchandise is sold or is likely to be sold in the United States at less than its fair value.

(106085.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39072—G. A. 8517.)

Necklaces composed of real amber beads—Jewelry.

1. Amber bead necklaces with clasps, valued above 20 cents per dozen pieces, are dutiable as jewelry under paragraph 356, act of 1913.

2. The unsupported testimony of a single witness on the part of the importer, if contradicted by a competent witness testifying on behalf of the Government, is not sufficient to overcome the presumption of correctness attaching to the collector's action.

3. Where a witness has not definite memory of an occurrence, it is proper for him to refresh his memory from memoranda made contemporaneously with the event, and testimony given under such circumstances is competent and admissible.

4. Contradictory notations made by appraising officers on an invoice and papers attached thereto, made and corrected prior to liquidation by the collector, are insufficient to overcome the presumption of correctness attaching to the collector's action.

5. Statements by the appraiser made in a report to the collector subsequent to the date of liquidation, and therefore subsequent to the collector's decision, are without any probative weight as testimony. (American Bead Co.'s case, G. A. 8469, T. D. 38883; Jones on Evidence, pocket edition issued May, 1911, secs. 874, 875, 881, pp. 1119, 1120, and 1127; American Bead Co. *v.* United States, 7 Ct. Cust. Appls. 161; T. D. 36465, cited and followed.)

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United States General Appraisers, New York, April 18, 1922.

In the matter of protest 942242 of Guiseppe D'Elia against the assessment of duty by the collector of custom at the port of New York.

[Affirmed.]

Strauss & Hedges (*J. L. Klingaman* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers; Brown, G. A., concurring).

Sullivan, General Appraiser: The merchandise in question was assessed with duty as jewelry at 60 per cent ad valorem under paragraph 356, act of 1913. The protest claims it dutiable "under the first part of par. 333 (as being loosely strung on thread) at only 35 per cent ad val., or the last part of said par. 333 at only 50% ad val., or par. 367 (as manufactures of amber) at 10% ad val., or par. 357 (as precious or semiprecious stones) at 20% ad val." The last is apparently the claim relied on.

The contention of the Government is that the merchandise consists of completed necklaces composed of amber, valued over 20 cents per dozen pieces, and the importer's, that it consists of amber beads, strung loosely on thread for facility in transportation only, and in view of the holding of the board in the American Bead Co.'s case, G. A. 8469 (T. D. 38883)—the record in which was admitted in evidence herein—is dutiable under the provision for precious stones and semiprecious stones, cut but not set, suitable for use in the manufacture of jewelry in paragraph 357.

On the invoice the merchandise is described as "9,130 grains agates pebbles." The testimony of the importer is that this item was real amber on strings without clasps or fasteners; that they were temporarily strung for facility of transportation, and are afterward restrung. On cross-examination he stated the clasps were imported with the amber separately; that the strings in question were without clasps. He admitted he only examined part of the lot, and did not see all the merchandise imported. He testified—

> In order to sell them we have to restring them. * * * They are not properly strung, they are not assorted right, the length is not right. * * * If they would come complete we would restring them anyway because they are not properly strung on the other side.

He stated the clasps were on separate strings, and were also of amber. On cross-examination he further testified "Sometimes they have clasps on; * * * this shipment did not have the clasps on; the clasps were strung on separate strings."

Mr. Kean, the United States examiner who passed this merchandise, stated there is a notation in pencil on the invoice covering the

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item in question. This was evidently made by him at the time of examination. He testified it refreshed his memory as to the character of the merchandise; that it was "amber necklaces, clasped, complete necklaces." He testified the necklaces were complete with clasps, "ready to be worn in the condition as imported." He stated he had samples of this merchandise before him. He admitted that his recollection was not definite as to the nature of the merchandise other than the notation he made on the invoice. He testified "I only return amber necklaces when completely clasped, when ready for use as jewelry." He did not return such when they are loosely strung. "When they are loosely strung they are handled as beads, or they formerly were."

As to the use of memoranda to refresh a witness's memory, "Jones on Evidence," pocket edition issued May, 1911 (secs. 874, 875, and 881, pp. 1119, 1120, and 1127) has the following:

> It is unanimously agreed that * * * under proper limitations witnesses may resort to memoranda or writings in aid of memory. * * * (1) Where the writing is used only for the purpose of assisting the memory of the witness; (2) where the witness recollects having seen the writing before; and though he has no independent recollection of the facts mentioned in it, yet he remembers that, at the time he saw it, he knew the contents to be correct. * * *
>
> It is now well settled that a memorandum or writing may be used by the witness, not only when he can swear from actual recollection, but, in some cases, where the witness, after referring to such writing, can swear to a fact, not because he remembered it, but because of his *confidence in the correctness of the writing*. It is necessary in such cases that the witness should be able to testify that the entry or writing was made *contemporaneously* with the event *and that at the time he knew the memorandum* to be correct. It is sometimes said that the witness is allowed to testify to the matter, so recorded, because he knows that he could not have made the entry unless the fact had been true.

In our opinion, therefore, even had it been objected to by counsel for the importer (as a matter of fact it was not) Mr. Kean's use of the pencil notations in question, made by him personally on the invoice, a part of the record in this case, was proper.

The protestant's brief calls attention to a notation on the invoice indicating that about two months after the importation was made and the goods passed a change in classification was made by the examiner.

The item on the invoice in question, with notations, reads as follows: "R. C. S. 103 9130 grains agates pebbles 5–25m/m 41–365.20." In the margin in black ink is "35% Par. 333." In lead pencil (apparently the notation made by Mr. Kean and used to refresh his memory) is "amber neckl. clasped." In red ink over the item is "Jewelry, comm. so known, 60% 356 JFk RA." In the right-hand margin in lead pencil appears "See sheet X. 9130 grms. ÷ 9000." In the left-hand margin is an asterisk roughly drawn in red ink. On an extra sheet of yellow paper attached to

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the invoice, marked "X" in a circle in red ink, and dated September 10, 1920, appears "9130" followed by some partly illegible words in red, stricken out by a red-ink line, which are apparently "grams amber strings" followed by an illegibility. Over this item, also stricken out in red, appears the red stamped notation, "Beads loosely strung for facility in transportation only 35% Par. 333." This stamped notation is so blurred by rubbing and the red-ink erasing line that deciphering it is largely guesswork. Over this appears in red, stamped very illegibly, "Jewelry, comm (whether "commercially" or "commonly" is difficult to say, as the word is blurred and partially erased; apparently by the space occupied it is "commercially") so known, 60%, 356." In the left-hand margin in black is the word "strgs," apparently meaning "strings." Written in red ink at the right is something that looks like "Taxes 11/12/20."

Written on the back of the "Summary of Entered Value, Examination, and Appraisement" is the following, among other notations, in red ink:

App.

Please note discrepancy in return. Item * on invoice proper described by you as jewelry and returned @ 60%, whereas the same goods items * on importer's memo. of addition to make value is described as beads loosely strung @ 35%. * * *

Dec. 14, 1920. JRP

The importer's memorandum referred to in the last quoted notation is apparently the yellow sheet, dated September 10, 1920, marked in red ink with "X" inclosed in a circle.

It is apparent, therefore, that about September 10, 1920, the item referred to as "9,130 grams agates pebbles" on the invoice and as "9,130 grams amber strings" on the yellow sheet, or importer's memorandum of addition to make value, being the merchandise under protest, were respectively marked in red ink by the examiner "Jewelry comm. so known, 60% 356" and "Beads loosely strung for facility in transportation only, 35% Par. 333," and that the appraiser's attention being called to the discrepancy on December 14, 1920, he subsequently amended his return on the yellow sheet by striking out the words "Beads loosely strung for facility in transportation only, 35% Par. 333," and writing over them the words "Jewelry, comm (?) so known, 60%, 356," thereby making his return correspond with his return on the invoice. This is evidenced by the following notation in red ink on the back of the "Summary of Entered Value," etc.:

Collector,

Please note amended return item X. Items covered by (X) are in excess of original invoice.

12/17/20. C. E. VICTORY.

Approved. John K. Sague,
Appraiser.

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(The items covered by (X) referred to above are not in question in this case.)

By reason of this apparent contradiction in the appraiser's return counsel for the importer states in his brief:

Under such circumstances the goods no longer having been before the examiner when the change was made, there is absent the usual presumption of correctness attaching to the collector's action.

An examination of the record will fully answer the contention of counsel. The collector did not act on any of the appraiser's returns, or on his own judgment, until long after the correction was made by the appraiser. The entry was liquidated by the collector on February 10, 1921; the appraisement and recommendations of the appraiser were all made prior thereto. Therefore, the presumption of correctness attaching to the collector's action is ample and complete. Occasionally the duties of the appraiser and collector are forgotten. It is not the duty of the appraiser to classify merchandise. It is not the duty of the collector to appraise merchandise.

Paragraph M, Section III, of the act of 1913, provides—

That the appraiser shall revise and correct the reports of the assistant appraisers as he may judge proper, and the appraiser, or, at ports where there is no appraiser, the person acting as such, shall report to the collector his decision as to the value of the merchandise appraised.

In the case at bar the appraiser revised and corrected the returns and reports of the assistant appraisers. He reported to the collector his decision. Whether there was a correction of a former decision or not is immaterial. At the time the collector liquidated the entry he had before him the full and complete acts of the appraiser.

Turning to the next paragraph (N) we find:

That the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise * * * shall be final and conclusive against all persons interested therein, * * *.

This paragraph indicates the duty of the collector. He classified the merchandise when the entry was liquidated. Therefore, the presumption of correctness attaching to the collector's action has not been impeached by any act of the appraiser.

In its decision in American Bead Co. *v.* United States (7 Ct. Cust. Appls. 161; T. D. 36465), referring to the powers and duties of the collector and the effect of reports of the appraiser, the court states:

Wherefore, it is apparent that at the time of the decision of the collector there was no classification or attempted classification, advisory or otherwise, before him by the appraiser that this merchandise was commercially and not commonly known as jewelry. A literal examination of the letters of transmittal and reports submitted without reference to the invoices shows this to be true. There was an advisory classification that they were "jewelry," which included both that commonly or commercially so known. The collector reported to the board long after his decision had been

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made, under the regulations requiring him to give the "reason" for his decision, article 1074, supra, that the merchandise was assessed with duty in accordance with the advisory classification returned by the appraiser "on the invoice," and more particularly *described* in the special report herewith. The collector acted upon the advisory classification *upon the invoice* and not upon the answer to the protest made long after his decision. He stated that the goods were more particularly "described" in the special report of the appraiser, but that description is not had by that part of his report stating that they were "commercially known as jewelry," but by that part thereof relating to their physical characteristics, to wit, "necklaces or neck chains composed in chief value of beads, valued over 20 cents per dozen pieces." If we ask to describe an article of personal adornment, we are afforded no light by a statement that it is commonly or commercially known as jewelry, but we are enlightened by the reply that it consists of "necklaces or neck chains composed in chief value of beads, valued over 20 cents per dozen pieces."

With reference to the merchandise under consideration as to whether or not it is jewelry, as the appraiser reported, we have the testimony of the examiner that the merchandise is completed necklaces ready for use in the form in which imported; that he made notations on the invoice at the time of its examination, and is satisfied with their correctness. Under such state of facts the presumption, as well as the fact, of proper classification has not been overcome.

In our recent decision in the American Bead case, G. A. 8469, supra, the record in which was received in evidence herein, we held that completed necklaces with clasps composed of real amber and valued above 20 cents per dozen pieces are properly dutiable as jewelry under paragraph 356. The same is true of the merchandise under consideration. Whether it is commonly or commercially so known, as stated by the appraiser, may or may not have value. If it is jewelry we have a right to assume that it is commonly so known; whether commercially so known or not is a question of fact to be established. The statement of the appraiser that the merchandise is commonly known as jewelry has not been shown to be erroneous, nor have the importers established their contention that the merchandise consists of amber beads temporarily strung for facility in transportation only, and therefore dutiable as semiprecious stones, cut but not set, suitable for use in the manufacture of jewelry.

The protest is overruled.

BROWN, G. A.—I concur in the result.

(T. D. 39073—G. A. 8518.)

Date of exportation under bond.

The date of exportation under a bond given for the exportation of imported merchandise within a definite period is the date when the merchandise leaves the United States, and not the date when it is placed on board the vessel or other common carrier and bill of lading issued.

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United States General Appraisers, New York, April 21, 1922.

In the matter of protest 937114 of Landeck & Merrill against the assessment of duty by the collector of customs at the port of Seattle.

[Affirmed.]

Harry F. Landeck for the importer.

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers).

HAY, General Appraiser: The only question raised by this protest is what constitutes the date of exportation of merchandise imported under bond to export the same. The protestant imported a Rolls-Royce automobile from Canada into this country on the 9th day of April, 1920, for touring purposes, and gave bond to export the same within six months. The facts as disclosed by the evidence are that the importer placed the automobile on board the steamship *Lisbon Maru* at the port of New York, and took a bill of lading therefor on the 7th day of October, 1920, but the steamship in question did not sail from New York until the 20th day of October, 1920. The automobile was therefore placed on board the steamship and bill of lading received therefor within the six months' period of the bond, but it did not leave the United States until some days after the expiration of the period of the bond for exportation.

Our attention has not been called to any case in which this exact question has been decided. In so far as we are advised it has not heretofore arisen. The question, however, of the date of exportation of merchandise from a foreign country that is imported into this country was decided and definitely settled long ago by the Supreme Court of the United States in the case of Irvine *v.* Redfield (23 How. 170). There it was held that the exportation of merchandise from a foreign port is the time when the ship actually departs, and not the time when merchandise had been placed aboard the same and a bill of lading given. This case has been followed in many decisions of this board, and it has been long settled that in merchandise bearing ad valorem duty the date when the value is to be ascertained is the date when the merchandise leaves the foreign country; that is to say, when the common carrier which bears it from that country leaves the confines of that country.—G. A. 4400 (T. D. 20954) and G. A. 5294 (T. D. 24266). We know of no reason why the same rule should not apply in the case of a bond for exportation. Such a rule can work no hardship. In the case at bar the protestant could very easily have placed the car upon board some ship that would have sailed within the period of the bond.

The protest is overruled.

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(T. D. 39074—G. A. 8519.)

Shortage.

1. The words "make claim" used in article 608 of the Customs Regulations of 1915, as amended, touching shortage in unexamined packages, mean "delivering claim to collector." Mailing in time does not cure failure to arrive in time.

2. Sunday not non dies in computing the two days. Although second day is Sunday, Monday would be the third day and not allowed.

3. Regulation is reasonable. Affidavits properly rejected by the collector in cases where notice not received in two days and also in cases where all the requirements of regulation not complied with.

4. On trial before the board, affidavits rejected by collector and objected to by Government counsel because not admissible in de novo hearing of protest are excluded from consideration.

United States General Appraisers, New York, April 21, 1922.

In the matter of protests 939944, etc., of Geo. Borgfeldt & Co., against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Thomas J. Doherty for the importers.

William W. Hoppin, Assistant Attorney General (*Marcus Higginbotham, jr.*, special attorney), for the United States.

Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers).

ADAMSON, General Appraiser: In all these cases the importers protest the duty on certain merchandise alleged to have been found short in unexamined packages.

The reports of the inspectors are that all the packages were landed and delivered to the cartman in good order.

The importers made out claims and mailed them to the collector, notifying him of the shortage discovered, mailing them within the time prescribed by the regulations, but in protests 939944, 941478, and 941985 the letters were not received by the collector until the third day, in which cases all affidavits were rejected.

In all cases the collector refused to allow the shortage claimed on account of failure to comply with specification (*d*) in article 608 of the Customs Regulations, as amended, because in some cases nothing appeared about any claim on the shipper and his reply thereto, while in other cases there appeared to be an absolute refusal on the part of the shipper, alleging that all the articles were shipped.

The importers claim that compliance with specification (*d*) is not material in this case and the collector had no right to reject the evidence on that ground and assess the duty; but, under the circumstances of this case, the board believes that the collector was right in concluding that it was material. The packages were intact and discharged in good order. That condition would have been perfectly consistent with original omission of articles from the packages

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before they were securely closed up and would have promptly disposed of the case if there had been an application and a prompt reply as to every package. The positive refusal of the shipper in certain cases emphasizes the importance and reasonableness of the regulation, and establishes the fact, taken in connection with the certificate of the discharging inspectors, that the missing articles were abstracted after they were landed in the United States. At least the collector had a right to say that, in view of the circumstances, he was not satisfied on the question.

The importer further claims, in his brief, that the requirement to "make a claim" does not mean "notify" the collector, but that if he writes a notice and signs it and mails it, his claim is made, no matter when, if at all, it reached the collector. The authorities he cites fail to convince us of his proposition. We believe the language "make claim therefor" means to notify the collector of the shortage so that he will have all the facts before him under which he may act intelligently.

We have examined the authorities on the subject of Sunday as dies non and we are unable to hold the importer was entitled to another day because the second day was Sunday.

Entertaining these views of the questions presented, the board is unable to say that the collector acted wrongly. If we were able to say that, we could end the case right here by sustaining the protest, and the importer assumes a correct position in his protest that the affidavits sent up were proper and relevant to enable us to determine whether or not in the first instance the collector acted rightfully or wrongfully.

As to the first question presented in the cases, we decide, after having examined all the papers, that we can not reverse the collector's action in determining his action on the papers before him.

The second question presented is, Can we find from the evidence before us on a de novo hearing of the protest that there was a nonimportation because, notwithstanding the fact that we are unable to reverse the collector in his action, yet the importer had a right in all these cases to bring original proof before us and prove that the missing goods were not imported into the United States, that if they disappeared from the package the disappearance occurred before landing?

On the trial of that de novo issue, there was no evidence introduced before us. No witness was examined. The only evidence offered consisted of the affidavits before the collector for the reasons assigned by him, the importer insisting that they be considered as evidence on the trial of the issue of nonimportation, the Government objecting thereto on the ground that in the hearing of protests affidavits are not admissible over objection of the other side. We think the

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position of the Government is correct and we refuse to consider the affidavits as evidence on the issue of nonimportation before us, and, in the absence of any other testimony, we overrule the protests.

Exception allowed to importers on ruling of the board excluding affidavits offered by importers from consideration.

(T. D. 39075—G. A. 8520.)

Shortage.

1. One specified case in a consignment of 300 cases, landed on the dock but lost before delivery, properly assessed for duty.

2. Merchandise when landed has been imported. When imported the law says duty "shall be levied, collected and *paid* except as otherwise specially provided for in this Act." There is no other provision specially providing for remission of duty on goods lost in Government custody.

United States General Appraisers, New York, April 21, 1922.

In the matter of protest 941258 of S. V. Nevanas & Co. (Inc.) against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Mrs. H. I. Woodruff for the importer.

William W. Hoppin, Assistant Attorney General (*Marcus Higginbotham, jr.*, special attorney), for the United States.

Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers).

ADAMSON, General Appraiser: In this suit against the Government the importer seeks to recover the duty assessed and collected on one box of hatter's fur, No. 1837, out of a consignment of 300 boxes.

It appears from the record, there being no other testimony introduced, that the box in question was landed from the steamship but was not afterwards found for delivery. The solitary question for determination by us is, Was it right for the collector to take duty on a box which, after having been landed on the dock, was lost while in Government custody?

There have been some obiter dicta by the court and by one of the three boards, expressing the opinion that duty can not be collected on goods lost from Government custody, but none of those cases turned on that question. The question has never been decided by any court or board. Every case in which it was so discussed turned on the evidence. Until some decision is definitely made, controlling the action of this board, this board will continue to hold that duty attaches to imported merchandise as soon as it becomes imported merchandise.

The existing tariff law provides, immediately after the enacting clause, that "except as otherwise specially provided for in this act, there shall be levied, collected, and paid upon all articles when imported from any foreign country," etc.

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The well-accepted construction of the law is that when merchandise reaches our jurisdiction, at least when it is landed on the dock from the steamship, it has been imported. There are one or two decisions which consider the rate of duty and discuss and determine as to the duties in which tariff act shall apply. Those are cases which consider the collection of duty on articles arriving about the time that one tariff act was giving place to another, and the questions involved were not whether they were subject to duty but under which act they should be taxed.

There are cases in which Congress has provided for the remission of duties after the merchandise had arrived within our jurisdiction and after the duty had attached, but in each of those exceptional cases provided by the act of Congress the consideration of an application for remission of duty occurred after the goods had reached our jurisdiction and the duty had attached.

For this board to hold that the duty should not be collected on a package because it disappeared from Government custody after landing, it would be necessary to find some act of Congress making an exception to the general law and authorizing us to make such a finding. As no such exception exists, we are unable to exercise any such authority. Under existing law it would be just as reasonable to hold that the Government is liable to the importer for the value of goods lost in Government custody as to hold that the Government must lose the duty because lost in Government custody.

The protest is overruled.

(T. D. 39076.)

Hardened oil.

BUSH & CO. (INC.) *v.* UNITED STATES (NO. 2127).

1. HYDROGENATED OR HARDENED OIL.

An oil which has been hardened by adding to its hydrogen content is not a chemical compound, but remains the oil it originally was.—United States *v.* Rockhill & Vietor et al. (10 Ct. Cust. Appls. 113; T. D. 38374).

2. CONSTRUCTION, PARAGRAPHS 5 AND 498, TARIFF ACT OF 1913—"CHEMICAL * * * COMPOUNDS"—"CHEMICALLY COMPOUNDED."

Soya-bean oil which has been hardened by adding to its hydrogen content by means of a chemical reaction which produces an oil having properties not possessed by the original oil and available for uses for which the original oil was unsuitable, does not become a chemical compound under paragraph 5, tariff act of 1913, but is a chemically compounded oil within the meaning of that expression in paragraph 498.

3. EVIDENCE—PRESUMPTION IN FAVOR OF COLLECTOR—HARDENED SOYA-BEAN OIL.

Hardened soya-bean oil was classified by the collector as a chemical compound under paragraph 5, tariff act of 1913, and claimed by the protest to be free of duty as an oil not chemically compounded such as commonly used in soap making. The Board of United States General Appraisers found the oil entitled to entry free

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of duty as soya-bean oil under paragraph 561, but, in the absence of such claim in the protest, affirmed, without approving, the collector's decision, and the decision of the board is affirmed.

United States Court of Customs Appeals, February 8, 1922.

APPEAL from Board of United States General Appraisers, T. D. 38766 (G. A. 8448). [Affirmed].

Comstock & Washburn (*J. Stuart Tompkins* of counsel) for appellant.

William W. Hoppin, Assistant Attorney General (*Frank P. Wilson*, special attorney, of counsel), for the United States.

[Oral argument October 27, 1921, by Mr. Washburn and Mr. Hoppin.]

Before DE VRIES, Presiding Judge, and SMITH, BARBER, and MARTIN, Associate Judges.

SMITH, Judge, delivered the opinion of the court:

Hardened soya-bean oil entered at Seattle was classified by the collector of customs as a chemical compound and assessed for duty at 15 per cent ad valorem under paragraph 5 of the tariff act of 1913, which paragraph reads as follows:

5. Alkalies, alkaloids, and all chemical and medicinal compounds, preparations, mixtures and salts, and combinations thereof not specially provided for in this section, 15 per centum ad valorem.

The importer protested that the importation was not a chemical compound, but that it was an oil commonly used in soap making and "not chemically compounded." The protestant therefore claimed that the merchandise was free of duty under paragraph 498, which reads as follows:

FREE LIST.

498. Grease, fats, vegetable tallow, and oils (excepting fish oils), not chemically compounded, such as are commonly used in soap making or in wire drawing, for stuffing or dressing leather, not specially provided for in this section.

The Board of General Appraisers found that the merchandise was not a chemical compound and that it was not chemically compounded. It was further held that the importation was more specifically provided for by paragraph 561 of the free list as soya-bean oil than by paragraph 498 as an oil not chemically compounded commonly used in soap making, and that therefore the oil was free of duty under the former and not under the latter paragraph.

On the ground that the importer had failed to claim free entry under paragraph 561, which provided for soya-bean oil by name, the board overruled the protests without approving the action of the collector, and the importer appealed.

The evidence in the case established without contradiction that the oil in controversy was soya-bean oil chemically modified while heated and under pressure by the addition of two or more atoms of hydrogen induced by the presence of nickel. By the catalytic action of the nickel a part of the oleic acid component of the oil gained for each of its atoms two atoms of hydrogen and was converted into stearic acid.

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The chemical change thus accomplished added to the oil a quantity of stearic acid not found in the original oil and thereby caused the oil to harden or become solid at a temperature lower than would otherwise have been the case, but it did not convert the oil into a substance which was not an oil or fat. From that it follows that the hydrogenation of the oil did not result in a chemical compound and the finding of the board to that effect must therefore be sustained.—United States *v.* Rockhill & Vietor et al. (10 Ct. Cust. Appls. 113, 115, 116; T. D. 38374). Whether the chemical treatment to which the soya-bean oil was subjected produced a "chemically compounded oil" is another question and one which must be determined by the evidence and the meaning of the expression "chemically compounded."

I. F. Lucks, a witness for the importer, defined a chemically compounded oil or fat "as an oil into which either a chemically element or a chemical compound was introduced that was not found in oils in nature, by the introduction of which it changes the properties of the oil so that it has different properties from the natural oils." When asked to give an illustration of what he regarded as a compounded oil, he said, "I would [so] regard a boiled oil to which manganese or lead or ether compounds had been added and combined with oil. Such an oil does not occur in nature. There are no oils that contain lead. *It changes the properties of that oil. It makes it a very quick drying oil.* I would [so] regard a sulphurated oil to which sulphuric acid has been added and with which it has been combined. You might regard soap as a chemically compounded oil. An alkali has been added to an oil, and the character of the oil has been changed." (Italics are ours.) He admitted that the hydrogenation of the oil caused a chemical reaction and chemically produced a different product.

Harrold Failes, another witness for the importer, defined a chemically compounded oil "as one to which some chemical had been added that did not occur in the natural oil, fat, or grease, which increases the complexity of the oil, fat, or grease to which it is added." He stated that the oils treated with sulphuric acid, sulphur, bromine, and iodine were examples of chemically compounded oils. *He admitted that sulphur was a natural element of mineral oils, that iodine was natural to cod-liver oil, and that sulphur entered into vulcanized oils "in a manner analogous to the introduction of hydrogen."*

The definition of chemically compounded oils given by these witnesses is warranted by no authority which we can find and none was cited in the briefs or by either of the witnesses. Carefully analyzed, that definition simply means that a new product, produced from an oil by the chemical action of a reagent not natural to the original oil, which new product is thereby endowed with proper-

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ties and uses not characteristic of the original oil, is a chemically compounded oil, whereas the introduction of a chemical agent *natural* to the oil and producing identically the same chemical effects is not a chemically compounded oil. We are quite convinced that Congress, far from contemplating any such distinction as that, was more concerned with the chemical effect produced on the original oil than it was with the reagent employed.

In our opinion it was not the legislative intent to discriminate against oils chemically changed by sulphuric acid, lead, or other foreign agencies into new products with new properties and limited or new uses, and to favor oils produced by adding hydrogen with a consequent chemical reaction attaining the same end as that achieved by the foreign agencies. To hold otherwise would result not only in an arbitrary concession to hydrogenated oils, but in classifying as dutiable oils containing sulphur or iodine and chemically treated with sulphur or iodine and in admitting to free entry oils not containing those elements, although chemically changed by them as reagents—an outcome justified by none of the ordinary rules of tariff making of which we are aware.

We find, first, that the introduction of additional hydrogen into the soya-bean oil in question produced a chemical reaction, which converted part of the oleic acid into stearic acid, and added to the material so chemically treated a larger quantity of stearic acid than that which it originally contained; second, that the stearic acid so developed by hydrogenating the soya-bean oil caused the oil to harden or become solid and thereby fitted it for the manufacture of hard soap, a use, according to the testimony, for which it would not have been available in its liquid form; third, that oils so chemically treated as to result in a chemical reaction which produces an oil having properties not possessed by the original oil, and available for uses for which the original oil was unsuitable, are "chemically compounded oils" within the meaning of that term as used in paragraph 498 of the tariff act; fourth, that an oil which is not so chemically treated as to convert it into a substance which is not an oil or fat is not a chemical compound; and fifth, that the importation is a chemically compounded oil.

The decision of the board overruling the protest without approving the action of the collector is therefore *affirmed*.

(T. D. 39077.)

Incense and burners—Entireties.

DOW CO. *v.* UNITED STATES (No. 2134).

1. ENTIRETIES, INCENSE AND BURNERS.

Statuettes of the Buddha and sticks of incense were imported together. The statuettes may be used to burn the incense sticks or incense in other forms or may

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be used simply as ornaments, while the incense sticks may be used without the statuettes. The two classes of merchandise are not entireties because imported together and adapted to be used together.

2. CONSTRUCTION, PARAGRAPH 78, TARIFF ACT OF 1913—"COMMON * * * EARTHENWARE."

The word "common" as applied to earthenware in paragraph 78, tariff act of 1913, does not refer to the *material* but to the object made of it. It means usual, frequent, or regular, rather than commonplace, hackneyed, vulgar, or low. So, earthenware figures of Buddha with similar trays to be used as bases for them, being not common or usual things in this country, are not classifiable under the paragraph as common earthenware articles, notwithstanding that they are not commonplace, hackneyed, coarse, vulgar, or low. Their classification by the Board of United States General Appraisers as decorated earthenware under paragraph 79 is approved.

United States Court of Customs Appeals, March 31, 1922.

APPEAL from Board of United States General Appraisers, Abstract 44413.

[Modified.]

Comstock & Washburn (*J. Stuart Tompkins* of counsel) for appellants.

William W. Hoppin, Assistant Attorney General (*G. F. Lamb* and *Samuel Isenschmid*, special attorneys, of counsel), for the United States.

[Oral argument February 24, 1922, by Mr. Tompkins and Mr. Isenschmid.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

SMITH, Judge, delivered the opinion of the court:

Hollow, ornamented earthenware figures of Buddha, each figure accompanied by a package of 100 sticks of incense and a small earthenware tray, which serves as a base for the Buddha, were classified by the collector of customs at the port of Seattle as entireties and were assessed for duty at 40 per cent ad valorem as decorated earthenware under the provisions of paragraph 79 of the tariff act of 1913, which said paragraph in so far as pertinent reads as follows:

79. Earthenware * * * including * * * ornaments, toys, charms, vases, statues, statuettes, * * * and all other articles composed wholly or in chief value of such ware; if plain white, plain yellow, plain brown, plain red, or plain black, * * * painted, colored, tinted, stained, enameled, gilded, printed, or ornamented or decorated in any manner, and manufactures in chief value of such ware not specially provided for in this section, 40 per centum ad valorem.

The importer protested, first, that the figures of Buddha and the packages of incense sticks were not entireties; second, that the incense was dutiable at 15 per cent ad valorem under paragraph 385; and, third, that the Buddha figures were dutiable as common earthenware made of natural, unwashed, unmixed clay under the provisions of paragraph 78. Paragraphs 78 and 385, in so far as they are material to the case, read as follows:

78. Common yellow, brown, or gray earthenware made of natural unwashed and unmixed clay; * * * if ornamented, incised, or decorated in any manner, and manufactures wholly or in chief value of such ware, not specially provided for in this section, 20 per centum ad valorem * * *.

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385. That there shall be levied, collected, and paid * * * on all articles manufactured, in whole or in part, not provided for in this section, a duty of 15 per centum ad valorem.

The Board of General Appraisers held that the figures and the packages of incense were classifiable as entireties and dutiable at 40 per cent ad valorem under paragraph 79 as painted, colored, or ornamented earthenware.

The importer appealed and now contends that the goods are not classifiable as entireties, but as separate entities, the incense sticks as nonenumerated manufactures dutiable under paragraph 385, and the figures as common yellow or brown earthenware made of natural, unwashed, unmixed clay dutiable under paragraph 78.

It appears from the evidence in the case that in 75 per cent of the sales to consumers the figures and incense sticks are sold separately. An examination of the samples establishes to our satisfaction that the figures and incense sticks are separate and distinct entities and that each is not only complete in itself, but not at all necessary to the use of the other. The figure when not burning incense serves the purpose of an ornament or statuette and might well be used to burn incense cones or grains of incense or powdered incense instead of incense sticks. On the other hand, the purpose of the incense sticks might just as well be accomplished by burning them in a saucer or other receptacle as in a tray covered by a hollow figure of Buddha.

We must therefore hold that the incense sticks are separately dutiable at 15 per cent ad valorem as manufactures not otherwise provided for.

We can not however sustain the claim of the importer that the Buddha figures and trays are dutiable under paragraph 78 as common yellow, brown, or gray earthenware made of natural, unwashed, unmixed clay. It is not disputed that both figure and tray are entireties and are made of a natural, unwashed, unmixed clay. The clay is brown in color as shown by the samples. Nevertheless, in the absence of any evidence to the contrary, we must assume that figures of Buddha set on bases, whether available for the burning of incense or otherwise, are in this country neither usual, customary, or ordinary articles of earthenware, nor usually, customarily, ordinarily, or even frequently used, and that, therefore, such figures, even if made of the clay specified in paragraph 78, are not common within the meaning of the statute. Indeed they are to our people rather novelties than common articles of earthenware. The primary meaning of "common" is—

1. Frequent or usual; often occurring, met, or seen; not out of the customary course; not distinguished or separated from the ordinary; not exceptional; regular; as, a common event; the common crow of North America.

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It also means—

3. Not excellent or distinguished in tone or quality; commonplace; hackneyed; coarse; vulger; low. (See "common"—Standard Dictionary).

The figures and trays are not commonplace, hackneyed, vulgar, or low, and, while they are not excellent or very fine in tone or quality, the court can not accept either excellence or distinction in tone or quality as a safe or certain standard for the classification of merchandise in the absence of any clear legislative expression that such was the purpose of Congress. Moreover, as Congress provided in paragraph 78 for *common* earthenware and in express terms required that it should be made of such an inferior material as natural, unwashed, unmixed clay, it is quite evident that the word "common" does not refer to the material of which the earthenware is made and must be given its primary and not its tertiary meaning.

But however that may be, the Buddhas, although they may be used as incense burners, are after all earthenware figurines, a class of statuettes, and as earthenware statuettes are specifically enumerated in paragraph 79, they can not be properly classified as common earthenware under paragraph 78.—Butler Bros. *v.* United States (9 Ct. Cust. Appls. 90; T. D. 37947).

As to the incense sticks, the decision of the Board of General Appraisers is reversed, and as to the figures of Buddha and their bases, it is *affirmed.*

(T. D. 39078.)

War tax on spirits.

BACARDI CORPORATION *v.* UNITED STATES (No. 2139).

1. CONSTRUCTION, PARAGRAPH 600, WAR REVENUE ACT OF FEBRUARY 24, 1919—WAR TAX ON SPIRITS—AMOUNT TAXED.

Paragraph 600 of the war revenue act approved February 24, 1919, levied an additional tax on distilled spirits then in bond and withdrawn for nonbeverage purposes. No duty was imposed on the owner of such distilled spirits imported and warehoused prior to the passage of the act to request a regauge of the spirits. The withdrawal tax was based by the law on the amount in bond at the time of the law's enactment, and not upon the amount imported and warehoused. It became the *collector's* duty to secure a regauge, since he could not reliquidate without one.

2. ESTOPPEL.

A quantity of rum was imported and entered for warehouse on April 23, 1917. It was gauged on May 29, 1917, the gauger's return showing that the packages were then in a bad condition. A regauge made subsequent to the passage of the war revenue act of February 24, 1919, showed substantial loss. Upon the passage of this act levying an additional duty based upon the amount of such spirits in bond at the time of the act's becoming law, it became the duty of the collector to ascertain such amount, and the United States should not be permitted to take advantage of its own neglect to do so by levying such additional duty based upon the amount shown by the original gauge.

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United States Court of Customs Appeals, March 31, 1922.

APPEAL from Board of United States General Appraisers, Abstract 44476.

[Modified.]

Barnes, Chilvers & Halstead for appellant.

William W. Hoppin, Assistant Attorney General (*Marcus Higginbotham, jr.*, special attorney, of counsel), for the United States.

[Oral argument February 17, 1922, by Mr. Halstead and Mr. Hoppin.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

SMITH, Judge, delivered the opinion of the court:

Two hundred hogsheads and 200 quarter hogsheads of Bacardi rum, imported at the port of New York, were entered for warehouse on the 23d of April, 1917, and gauged on May 29, 1917. The gauger's return shows that 7 of the packages had broken staves or heads started, and that 16 of them were plugged and 11 stained. Duty was assessed at $2.60 per proof gallon, as provided in paragraph 237 of the tariff act of 1913, less 20 per cent, as required by the treaty with Cuba, from which country the rum was imported. The collector reports that on such liquor as remained in store after October 3, 1917, there was levied an additional tax of $2.10 per proof gallon to meet the requirements of section 300, act of 1917. According to the report of the surveyor dated November 17, 1920, 15 of the hogsheads were regauged between February 7 and February 20, 1919, and 65 between March 4, 1919, and June 20, 1919.

Fifty hogsheads and 160 quarter hogsheads were entered for nonbeverage consumption on June 4, 1920, and the collector levied on the rum so withdrawn $2.60 per proof gallon under paragraph 237 of the act of 1913, less 20 per cent, as prescribed by the treaty with Cuba, and an additional duty of $2.20 per proof gallon in accordance with paragraph 600 of the act of February 24, 1919.

The rates so assessed by the collector were applied to and collected on the number of gallons shown by the gauger's report made on the entry of the goods for warehouse, notwithstanding the fact that the packages entered for withdrawal on June 4, 1920, were regauged between June 11 and June 15, 1920, and such regauge established that many of the hogsheads and quarter hosgheads in warehouse had lost a very considerable part of their contents. Indeed, a regauge had within a month of the passage of the act of February 24, 1919, showed that 35 of the hogsheads not here involved had lost a substantial quantity of the rum originally entered.

The importer protested that only the quantity of rum in the hogsheads at the time of the passage of act of February 24, 1919, was subject to the tax therein prescribed and that the exaction of

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$2.20 per proof gallon on rum not in bond on February 24, 1919, was illegal and void.

The Board of General Appraisers overruled the protest and the importer appealed.

The Government contends first, that it was the duty of the importer to request within a reasonable time after the passage of the act of February 24, 1919, a regauge of all spirits in bond after the passage of said act, and that failing to make such a request he was bound by the gauge made at the time of the entry of his goods; second, that the duty of $2.60 per gallon prescribed by the act of 1913 and the additional duty of $2.20 per gallon imposed by the act of February 24, 1919, were properly assessed and collected on the number of gallons shown by the gauge of the rum made at the time it was entered for warehouse.

We can not admit that it was *primarily* the duty of the importer to request a regauge or remeasurement of the merchandise upon the passage of the law imposing a rate of duty different from that in effect at the time of the entry of the importation.

The act of February 24, 1919, imposed an additional duty of $2.20 per gallon on distilled spirits *now in bond* and withdrawn for nonbeverage purposes. By the language of the statute itself that duty attached to the *quantity of spirits then in bond*, and thereby accomplished a change in the rate of duty on distilled spirits, which change in rate obliged the collector to reliquidate the entry as required by article 630 of the Customs Regulations of 1915. The collector did reliquidate, but he reliquidated without any information as to the distilled spirits actually *then in bond* other than the gauge made three years before on entry of the goods. Inasmuch as liquidation, as well as reliquidation, means the final computation and ascertainment of the duties due on merchandise, which computation or ascertainment is based on official reports as to the quantity, character, and value thereof (art. 615), and inasmuch as the collector could not possibly know the number of gallons in bond when the additional duty went into effect in February, 1919, it is very evident that it was the collector's duty to order a regauge of the spirits in warehouse on that date.

Sixty-five hogsheads were regauged between March 4 and June 20, 1919, and showed a shortage, but the spirits which are here the subject of controversy were not regauged until June 15, 1920, more than 15 months after the passage of the act. Under the circumstances we can not presume that the quantity of spirits entered in bond on April 23, 1917, was the quantity in bond at the time of the passage of the act of February 24, 1919, especially as a gauge of 65 hogsheads taken within two or three months of February 24, 1919, showed a substantial loss. If there had been no regauge it is possible that we

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would have been bound to accept the original gauge, but in saying that we do not mean to pass upon the validity of a reliquidation under paragraph 600 without a regauge. In this case, however, there was an official regauge of the spirits withdrawn for consumption on June 4, 1920, subsequent to the passage of section 600, and we must assume that the quantity shown by that gauge was the quantity in bond on February 24, 1919, not only because the original gauge manifestly incorrectly represented the quantity on hand on February 24, 1919, but because the Government should not be permitted to take advantage of its own delay in making a regauge which it was the duty of the collector to make on reliquidation of the entry in this particular case.

We hold, first, that the importation was subject to a duty of $2.60 per gallon on the number of gallons shown by the gauge made on entry of the goods for warehouse; second, that the spirits were subject to the additional duty of $2.20 per gallon on the number of gallons officially reported on regauge of the goods made subsequent to the passage of the act of February 24, 1919.

The decision of the board in so far as it applies the rate of $2.60 per gallon to the number of gallons shown by the original gauge is affirmed. In so far as the decision applies the additional rate of $2.20 per gallon to the quantity entered for warehouse and not to the quantity shown by the regauge made after passage of the act of February 24, 1919, it is *reversed*.

(T. D. 39079.)

Jute bags, secondhand— Waste.

UNITED STATES *v.* CHELSEA BAG & BURLAP CO. (No. 2118).

CONSTRUCTION—INCONGRUITY TO BE AVOIDED—WASTE TWILLED BAGS.

It would not be in harmony with the general policy of the tariff law to make the usable fabric of worn-out sugar bags dutiable at the same rate as if the fabric were new. Such bags, shown to be suitable for patching cotton bales, being excluded from entry free of duty under paragraph 408, tariff act of 1913, by reason of not being plain woven, should not be classified as manufactures of vegetable fiber under paragraph 284 and so made to bear the same rate of duty as if new; and the decision of the Board of United States General Appraisers classifying them as waste under paragraph 384 is affirmed.

United States Court of Customs Appeals, March 31, 1922.

APPEAL from Board of United States General Appraisers, Abstract 44250.

[Affirmed].

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

Allan R. Brown for appellee.

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[Oral argument February 16, 1922, by Mr. Hoppin and Mr. Brown.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

BARBER, Judge, delivered the opinion of the court:

When this case was tried before the Board of General Appraisers, the classification and consequent assessment of duty on various other bags and sacks, as well as the bags involved in this appeal, were under consideration, and the protests relating thereto were overruled by the board. From that judgment no appeal was taken by either party.

The particular protest, numbered 936,809, which is the subject of this appeal, covered old, used, twilled, jute sugar bags. They were classified and assessed by the collector under paragraph 284 of the act of 1913, while the importer claimed classification under various paragraphs, amongst others, 384 of the same act.

An amended appraiser's return to the collector, incorporated in the record, which is relied upon by both parties, and was by the board in determining the case, shows the character and condition of the importation, and is as follows:

> The merchandise subject of protest consists of twill woven sugar bags, with interwoven colored stripe, tied into bundles of 25, and in wet condition just as shipped from the refinery.
>
> Approximately half of the shipment consisted of damaged bags or those which had been purposely cut to destroy their identity as bags. In accordance, therefore, with decision of the General Appraisers rendered under date of September 24, 1920 (T. D. 38506), we would amend our report upon your order, returning 50% of the shipment as waste n. s. p. f. dutiable at 10%, P. 384, and the balance at 35% under P. 284, all as entered.

The collector, however, assessed all these bags at 35 per cent ad valorem under paragraph 284, and in his return to the Board of General Appraisers, after referring to the above quoted return of the appraiser, said that—

> inasmuch as the reliquidation of the entries, if made, following the appraiser's return would not sustain the protest in full, and the importers also make a claim for free entry under par. 566, or par. 408, or par. 586, the protest is forwarded to the board for its consideration.

Testimony was heard by the board, and concerning the merchandise here involved it found, in substance, that 50 per cent of the bags covered by the protest were usable as bags and the other 50 per cent suitable for patching cotton. The board sustained the protest as to 50 per cent of each entry covered by it, holding that one-half of the bags were classifiable as waste under paragraph 384, overruled the same as to the remainder, and directed reliquidation accordingly.

The Government only appealed, so that the sole question here is whether the judgment of the board directing classification of 50 per cent of these bags as waste under paragraph 384 should be sustained.

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The paragraphs are as follows:

284. All woven articles, finished or unfinished, and all manufactures of flax, hemp, ramie, or other vegetable fiber, or of which these substances, or any of them, is the component material of chief value, not specially provided for in this section, 35 per centum ad valorem.

384. Waste, not specially provided for in this section, 10 per centum ad valorem.

The Government relies upon the case of McGettrick *v.* United States (11 Ct. Cust. Appls. —; T. D. 38727).

It is important at this point to know exactly what was decided in that case. The merchandise, the classification of which was there under consideration, was found by the board, and assumed by the parties and this court, to be bags so worn, torn, cut, or slashed as to be unsuitable for reuse as bags, but which contained sufficient good cloth to make it commercially practicable to use them, or some of the cloth of which they were made, for patching cotton bales and as covers for barrel heads. They were referred to by the board as cotton patches. Evidently some were twill woven or colored and some were made from plain woven fabrics of single jute yarns not colored. All were by the board held classifiable as waste under paragraph 384. They had been assessed by the collector under paragraph 281 as bags or sacks made from plain woven fabrics of single jute yarns, not dyed, colored, etc.

That case before the board also involved bags suitable for reuse as such and bags so badly worn out or rotted that the material of which they were composed was chiefly used for paper making, but no question as to the classification of these two kinds of bags was raised in this court.

As to the bags used for patching and covers for barrel heads the importer claimed that such thereof as were made of fabrics composed of single jute yarns, not colored, etc., were entitled to free entry under paragraph 408; but, as stated, the board held that all these bags usable as patches, whether plain woven or twilled, were properly classifiable under paragraph 384 as waste not specially provided for.

In this court both the Government and the importer agreed that the merchandise was waste bagging, but the importer contended that because of the fact that the fabric itself was usable as patching it must, for the purposes of the tariff law, be regarded as in its original condition as a fabric, and that inasmuch as this fabric was of plain woven single jute yarns, not dyed, colored, stained, etc., it was more closely described in paragraph 408 than in the provision for waste not otherwise provided for; that is, the question reduced to whether the provision of paragraph 384 or of 408 more specifically described the merchandise.

In this court the importer's contention was upheld.

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In the opinion by Smith, Judge, among other things, it was said:

We have no difficulty in agreeing with the Government that bags may be so cut, worn, and torn that they are useless as bags and are waste bags, and that the fabrics of which they are made may be so damaged that they are useless as fabrics and are waste fabrics. * * * Bags which are simply cut down one side and through both ends, but not otherwise damaged, are evidently reduced to the original material out of which they were made, and while it must be admitted that bags so cut are no longer bags, it can hardly be said that the fabric of which they are chiefly composed, is no longer a fabric. * * *

The wear, tear, cutting, and other damage done to the bags in controversy reduced them to the condition of a mere material, and whether that material was classifiable as a waste or as a fabric depended entirely on its commercial use.

It should be expressly noted that this conclusion was limited to bags made of plain woven single jute yarns, not dyed, colored, stained, printed, or rendered noninflammable by any process.

The Government in the instant case argues that the bags involved in the case now before us, applying the logic of the McGettrick case, have been reduced to the original condition of material; that it is commercially useful and chiefly used as a textile fabric; that as it is twilled, instead of plain woven, it is not entitled to free entry under paragraph 408; that it should not be regarded as waste n. s. p. f. under paragraph 384, but rather should be classifiable under paragraph 284 as a manufacture of vegetable fiber.

The importer points out that in the McGettrick case the Government contended, as importer agreed, that the merchandise there was waste under paragraph 384; that but for the more specific provisions of paragraph 408 it would have been dutiable as waste; contends that in the case at bar the merchandise is likewise waste, which, because it is twilled, is excluded from paragraph 408, and claims that it should therefore be classified as waste under paragraph 384.

The importer fortifies this position by asserting that for a long time bags such as these have been regarded by the executive department, by the Board of General Appraisers, and by the courts as classifiable as waste. The Government does not dispute this assertion.

It must be admitted that if paragraph 408 covered twilled as well as plain woven fabrics, the bags here if otherwise therewithin would take the classification adopted in the McGettrick case.

The relevant part of free entry paragraph 408 reads as follows:

408. Bagging for cotton, gunny cloth, and similar fabrics, suitable for covering cotton, composed of single yarns made of jute, jute butts, seg, Russian seg, New Zeland tow, Norwegian tow, aloe, mill waste, cotton tares, or other material not bleached, dyed, colored, stained, painted, or printed, not exceeding sixteen threads to the square inch, counting the warp and filling, and weighing not less than fifteen ounces per square yard; plain woven fabrics of single jute yarns by whatever name known, not bleached, dyed, colored, stained, printed, or rendered noninflammable by any process; * * * *

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Obviously it was made by combining paragraphs 352 and 355 of the act of 1909. Paragraph 355, which was made the first part of paragraph 408, provided for a specific duty upon bagging for cotton, gunny cloth and similar fabrics, suitable for covering cotton, composed of single yarns made of jute, etc., not bleached, dyed, colored, stained, painted, or printed, and paragraph 352 provided a specific and ad valorem duty upon plain woven fabrics of single jute yarns of whatever name known, according to count of threads, with no limitation as to color or other condition thereof.

As consolidated and reenacted in paragraph 408, the provisions of paragraph 355 of the preceding act are not materially changed, except enlarged as to the material from which the yarns might be made, but paragraph 352 was changed by incorporating the limitation that the fabric should not be bleached, dyed, colored, stained, printed, or rendered noninflammable by any process.

In the McGettrick case it was pointed out that absolutely new fabrics of single jute yarns, not further advanced than plain woven, were entitled to free entry, while fabrics of the same kind, when cut from old bags, if held to be waste, would be dutiable, which is to say, that a used or partially worn-out fabric would be dutiable, while when new it would be free, an anomalous result, as the court observed, not in accordance with the policy of tariff laws.

With reference to the claimed administrative practice, it appears that the classification of merchandise of character similar to this has been the subject of much litigation.

In T. D. 31776, dated July 26, 1911, the Treasury Department announced that an exhaustive investigation had been made, as a result of which it was deemed advisable to inform the customs officers and others concerned its views as to the classification of this class of merchandise.

Half-tone engravings of various kinds of bags were made part of this decision, and referred to as exhibits numbered 1 to 11. Exhibits 1, 2, and 3 consisted of pieces of old bagging of various sizes, which it was said were exclusively used for patching for cotton bales. Exhibits 7 and 8 represented sugar bags cut and torn but of sound material and used for making covers for cotton bales. All these exhibits the department directed to be thereafter classified as waste under paragraph 479 of the act of 1909, which is identical with paragraph 384 of the present act.

So far as can be determined from an inspection of the half-tone engravings representing these exhibits, it would seem that the merchandise involved in this appeal would be classifiable as waste by the authority of this Treasury ruling, if controlling.

As already suggested, the Government makes no reply to the contention of the importer that administrative practice is of consequence here, but relies altogether upon the authority of the McGettrick case.

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In T. D. 30800 (Abstract 23742), dated July, 1910, which is referred to by the Treasury Department in T. D. 31776, the Board of General Appraisers adopted the view that is embodied in the department ruling as to secondhand burlap sugar bags, chiefly used for patching or baling cotton.

In T. D. 28202, decided May 23, 1907, the board considered the classification of old bagging which had been assessed by the collector as waste under paragraph 463 of the tariff act of 1897, which is in legal effect the same as paragraph 384 of the present act. There were three classes of the merchandise in that case, one of which consisted of large pieces suitable for patching or baling cotton. It had been assessed by the collector as waste, and that action was sustained by the board. The board cited and relied upon the case of Train Smith Co. (140 Fed. 113), which involved the classification of similar articles made of jute bagging. In that case, however, the court overruled a decision of the board directing the classification of the merchandise as waste, because it found, upon the evidence, that the merchandise could not be used for patching cotton bales, but was free as rags.

Train *v.* United States (107 Fed. 261), affirmed in 113 Fed. 1020, certiorari to the Supreme Court denied in 186 U. S. 483, is cited by the importer in support of his contention. In that case the merchandise was found by the board to be old gunny bagging made of jute used chiefly for paper stock, and held to be classifiable under paragraph 463 of the act of 1896 as waste not specially provided for, instead of under paragraph 344 of the same act as bagging for cotton or gunny cloth suitable for covering cotton. It appeared that there were various sizes of the cloth in the importations, the larger ones being suitable for covering cotton, the smaller not fit for such purpose, and in addition, that the merchandise was used for making mattresses, sweat pads, and various other things, although it was used for paper stock. No segregation of the merchandise devoted to the different uses being shown in that case, the learned circuit judge concurred in the opinion of the board "that the practical uses of the goods for purposes of manufacture, other than conversion into paper, are so relatively substantial and significant" as to justify a classification for waste rather than under paragraph 632 as paper stock, and therefore entitled to free entry.

Many other cases are cited by the importer that tend to show that old jute bagging, no longer susceptible for use as bags, the material fabric of which is in condition to be used for covering cotton or patching for covering cotton, has been classified as waste under and ever since the tariff act of 1897, and these cases, so far as we have noticed, make no distinction between plain woven and twilled material.

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We think a case of long-continued administrative practice and judicial determination that merchandise like that here involved has been regarded as classifiable as waste not otherwise specially provided for under previous tariff statutes, not differing materially in meaning from that relied upon here, has been established.

We see nothing in the act of 1913 that indicates this provision for waste shall no longer be regarded as applicable to the merchandise here.

We are still of opinion that, for reasons best known to itself, Congress indicated by the consolidation and reenactment of paragraphs 352 and 355 of the act of 1909 into paragraph 408 of the act of 1913 its will that plain woven jute fabrics of the character involved in the McGettrick case should be removed from the previous classification of waste, which would render them dutiable, and be given free entry.

There was no incongruity in the McGettrick case in holding that new fabrics and those of the same kind which were worn out for the first purpose to which they had been devoted, were free of duty, while there is an incongruity, which we are not willing to adopt in this case, in holding that waste bags composed of twilled fabrics shall pay the same rate of duty as if the fabrics were new, especially when such a view would result in overthrowing a long-continued customs practice founded upon judicial determinations of which Congress is presumed to be cognizant.

The judgment of the Board of General Appraisers is *affirmed.*

(T. D. 39080.)

Steel bars—Scrap steel.

TOWER & SONS *v.* UNITED STATES (No. 2126).

1. COMMERCIAL DESIGNATION—COMPETENCY OF WITNESS.

A witness with experience in the *manufacture* but not the *sale* of steel is not competent to prove commercial designation regarding it.

2. COMMERCIAL DESIGNATION.

If words in tariff statutes designating particular kinds or classes of goods have a well-known signification in the wholesale trade and commerce dealing therein different from the common meaning thereof, such commercial designation shall control, unless Congress has clearly manifested a contrary intention. The question of commercial meaning is one of fact, and upon the party asserting that claim falls the burden of establishing it. Commercial designation must be shown to be definite, uniform, and general, and not partial, local, or personal.

3. CONSTRUCTION, PARAGRAPH 518, TARIFF ACT OF 1913—"SECONDHAND."

The term "secondhand," in paragraph 518, tariff act of 1913, means something which has been used, and does not mean something which has been received from another.

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4. CONSTRUCTION, PARAGRAPH 518, TARIFF ACT OF 1913—"WASTE"—"SCRAP"—"REFUSE"—"FIT ONLY TO BE REMANUFACTURED."

The result of manufacturing processes designed to produce merchandise in the condition it is when imported, fit, as imported, to be used for the purpose for which it was made, does not become "waste," "scrap," or "refuse" by reason of the fact that it is to be used as such to be remanufactured into something else. The expression "fit only to be remanufactured" is made by the paragraph to apply only to merchandise which is secondhand, waste, or refuse.

5. STEEL BARS MADE FOR SHRAPNEL, BUT IMPORTED FOR USE IN MAKING BOLTS.

Steel bars made in Canada to be used in making shrapnel shells were, owing to the cessation of hostilities and the consequent lessened demand for such merchandise, sold at greatly reduced or scrap prices and imported into the United States to be used in the manufacture of bolts. They are dutiable as steel bars under paragraph 110, tariff act of 1913, and not admissible free of duty as scrap under paragraph 518.

United States Court of Customs Appeals, March 31, 1922.

APPEAL from Board of United States General Appraisers, T. D. 38789 (G. A. 8451).

[Affirmed.]

Frank S. Anderson for appellants.
William W. Hoppin, Assistant Attorney General, for the United States.

[Oral argument February 17, 1922, by Mr. Anderson and Mr. Hoppin.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

BARBER, Judge, delivered the opinion of the court:

The relevant parts of duty paragraph 110 and free entry paragraph 518 of the tariff act of 1913 are as follows:

110. Steel bars * * * if made by the Bessemer, Siemens-Martin, open-hearth, or similar processes, not containing alloys, such as nickel, cobalt, vanadium, chromium, tungsten, or wolfram, molybdenum, titanium, iridium, uranium, tantalum, boron, and similar alloys.

518. * * * wrought iron and scrap and scrap steel; but nothing shall be deemed scrap iron or scrap steel except secondhand or waste or refuse iron or steel fit only to be remanufactured.

It is not denied that the imported merchandise, which was invoiced as scrap steel or as scrap steel bars, is within the provision of paragraph 110 if it is steel bars, and the collector classified it thereunder.

The importers contend that it is scrap steel within the meaning of paragraph 518.

The Board of General Appraisers found, and it is not claimed here that such findings are erroneous, the following facts with reference to the importations:

1. As imported, the steel is in the form of bars from 5 to 16 feet in length and about 3½ inches in diameter, 80 per cent of the bars being 16 feet, 4 or 5 per cent being 8 feet, and the balance 10, 12, and 14 feet long.

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2. The steel is made in strict accordance with certain specifications which require a high carbon content, and the sole purpose or use for which it was primarily intended and designed was to be employed in the manufacture of 3½-inch shrapnel shells.

3. It was made by order of the Canadian Government at the plants of the Dominion Iron & Steel Co., in Canada, and some of it at Sydney, Australia, from whence the material was shipped to the Canadian Imperial Munitions Board and by the latter placed in storage before the armistice was signed.

4. After the signing of the armistice, the board found itself possessed of very large quantities of war material, and this steel, together with other surplus stocks, was disposed of by the Imperial Munitions Board to purchasers at greatly reduced prices, the purchaser of this particular shipment being Drucks & Frost (Ltd.), of Toronto, Canada.

5. The latter firm in turn sold the steel to the Buffalo Bolt Co., of Buffalo, N. Y., who manufactured the material into bolts.

6. In the interim, and until the steel was so manufactured into bolts, the original form and condition thereof remained intact and the material was not in the least respect altered or changed, nor was any manufacturing or other process applied thereto.

It also appeared that these pieces of steel had fractured ends, which fact importers claim tends to show that they were not commercial steel bars.

The importers at the hearing before the board introduced certain testimony from which it is claimed that this steel was not steel bars within the contemplation of paragraph 110 in that the term as there used had a commercial meaning, which would exclude it from that classification, and rely upon the well-known rule that if words in tariff statutes designating particular kinds or classes of goods have a well-known signification in the wholesale trade and commerce dealing therein different from the common meaning thereof, such commercial designation shall control, unless Congress has clearly manifested a contrary intention.

The board found against the importers on that issue. It is urged here that this finding was clearly contrary to the weight of evidence. We have carefully examined the record in this regard and find ourselves unable to sustain this contention of importers.

The question of commercial meaning is one of fact, and upon the party asserting that claim falls the burden of establishing it.

The single witness, Mr. Waterhouse, upon whose testimony importers chiefly rely for this purpose, testified in substance that he was employed by the Lackawanna Steel Co. as its metallurgical inspecting engineer and had supervision of making all its steel; that the company did not purchase any steel; that he was not in its sales department, although he knew about the orders given to his company, and if any question of the quality of the material came up, saw and conferred with the buyers thereof; that he passed upon the orders as to whether they would be profitable to his company; that he had become familiar with the terms used in the steel trade; that the expression "steel bars" had a general well-known meaning therein in October, 1913, which meaning he said would exclude the

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merchandise in this case, although he said he had not himself bought and sold steel under the commercial designations of the trade, and that his experience had been confined to making material for sale. He said he would call the merchandise scrap, "because of its random length, very bad appearance," and that "commercial bars are sheared with a regular end that is produced by sawing the bars." He also testified that the Lackawanna Steel Co. had acquired merchandise similar to the importation here which it did not use in the condition imported, but had it broken up and sent to the furnace for remelting.

Among other things, he testified on cross-examination that steel bars of such varying lengths as the merchandise here, with similar fractured ends, might be commercial steel bars.

While doubtless this witness was expert in the manufacture of steel, we do not think the record shows that he possessed the requisite knowledge of wholesale commercial transactions in the steel trade to speak with authority upon the question of commercial designation, and in any event we do not think the finding of the board that the claimed commercial meaning had not been established should be reversed by us upon the ground that it is contrary to the weight of evidence.

In this connection it must be remembered that commercial designation must be shown to be definite, uniform, and general, and not partial, local, or personal.

As confirming the board's finding on this issue, we note that another witness, the superintendent of the Buffalo Bolt Co., testified that in manufacturing the bars into bolts they sheared them to length, heated and rolled them into bolt stock; that they were in the form of steel bars when received; that steel articles of that size would generally be known in the trade as steel bars; and that they so remained up to the time they were converted into bolts. He was not specifically offered as a witness on commercial designation, and part of the testimony we refer to was given on cross-examination.

The importers urge that if the importation was ever steel bars, nevertheless, by reason of the fact that at the time of its entry there was no demand for it for the purpose of manufacturing shells, and it became necessary, in order to dispose thereof, to sell it at what was termed "scrap prices," coupled with the fact that it was used in the manufacture of bolts, establishes the claim that it was scrap steel within paragraph 518. Again we are forced to disagree with importers' contention. That paragraph described what shall be deemed scrap or scrap steel by declaring that nothing shall be so regarded "except secondhand or waste or refuse * * * steel fit only to be remanufactured."

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We think the term "secondhand" is commonly applied to something that has been used to some extent, generally for a purpose for which it was considered adapted. Importers contend that the meaning sometimes applied thereto as "received from another" is applicable here. Such a meaning of the term might transform a perfectly new article that had not deteriorated in any respect, and which was usable, and for which there was a demand, into the condition of scrap simply because it had changed hands after its production and before its importation. We do not think it could be well said, for illustration, that an automobile which had never been used, was perfect in all its parts and ready for use, became a secondhand automobile simply because its ownership had changed two or three times before it went into use.

Nor do we think these steel bars are waste or refuse fit only for remanufacture within the meaning of paragraph 518. They are the result of manufacturing processes designed to produce them in their imported condition, not waste or refuse resulting from those processes. As imported they are ready to be used in the manufacture of shells. They have been used in the manufacture of bolts, and so far as this record is concerned appear to be reasonably adaptable thereto. They are not scrap as that term is commonly understood. Whether they are fit only to be remanufactured becomes somewhat unimportant, unless they are first found to be second-hand or waste, but if that condition had been established, we are of opinion that the record here fails to show that the bars in question are fit only for remanufacture.

The importers finally contend that having regard to the fact, of which we are asked to take judicial cognizance, that owing to the cessation of war the demand for material of this kind has largely ceased, we should hold these bars to be in fact scrap or junk, while at the same time they admit that they are entirely suitable for the purpose for which they were designed.

Much as we would like to be able to assume that the time has arrived in the history of the world when there will be no war that would permit or require the use of shells in the conduct thereof, and, therefore, that there would never be demand for steel bars similar to these for the purpose of manufacturing shells therefrom, we hesitate to decide this case in favor of importers upon that ground, nor is it clear that because the original purpose for which these steel bars were made can not be carried into execution they could now be regarded in any aspect as scrap or junk, in view of the fact that they are readily diverted into the manufacture of bolts, to which use, so far as the record in this case shows, they are commercially adaptable.

The demand for many products has largely fallen off because of the end of the great war. Large losses have undoubtedly been sus-

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tained by reason thereof, just as large profits undoubtedly accrued theretofore. The cessation of demand, however, can not necessarily convert a given product into scrap. A diminished demand for a given commodity may occur in times of peace, and the failure of demand for a product is always a contingency that confronts a producer thereof.

We think the importers have failed to sustain the burden cast upon them in this case by showing not only that the classification of the collector is erroneous, but that the one claimed by them is correct.

The judgment of the Board of General Appraisers is *affirmed*.

(T. D. 39081.)

Wheat—Countervailing duty.

BALFOUR, GUTHRIE & CO. *v.* UNITED STATES (No. 2131).

1. CONSTRUCTION, PARAGRAPH 644, TARIFF ACT OF 1913—COUNTERVAILING DUTY ON WHEAT AND ITS PRODUCTS.

Paragraph 644, tariff act of 1913, admits wheat and its products free of duty, but levies duty upon them if imported from a jurisdiction "which imposes a duty on wheat or wheat flour or semolina imported from the United States." This does not mean that wheat or any one of its products is free here if free there; but means what it says—viz, that wheat or any of its products is dutiable here if wheat, wheat flour, *or* semolina is dutiable there. Consequently wheat imported from a jurisdiction which admits our wheat free of duty but levies duty on our wheat flour or semolina is dutiable under the paragraph.

2. RETROACTIVE FEATURE OF FOREIGN TARIFF LAW DOES NOT RENDER RETROACTIVE THE COUNTERVAILING DUTY PROVISION OF PARAGRAPH 644, TARIFF ACT OF 1913.

Paragraph 644, tariff act of 1913, admits wheat and its products free of duty with a countervailing duty proviso. Wheat entered here from Australia at a time when it was dutiable under the proviso is not rendered free of duty by the subsequent passage of an Australian statute meeting the proviso and retroactive past the date of the importation.

United States Court of Customs Appeals, March 31, 1922.

APPEAL from Board of United States General Appraisers, Abstract 44351.

[Affirmed.]

Frank L. Lawrence (*Martin T. Baldwin* and *Thomas M. Lane* of counsel) for appellants.

William W. Hoppin, Assistant Attorney General (*John J. Mulvaney* and *Harry M. Farrell*, special attorneys, of counsel), for the United States.

[Oral argument February 17, 1922, by Mr. Lane and Mr. Farrell.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

BARBER, Judge, delivered the opinion of the court:

The undisputed facts of this case are as follows:

A consignment of over 78,000 bushels of wheat produced there was imported from Australia and entered at the port of San Fran-

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cisco by the appellants August 24, 1917. On the following day the estimated duties were paid. Final liquidation was not had until November 20 following, at which time a duty of 10 cents per bushel was assessed under paragraph 644 of the tariff act of 1913, which we quote:

Wheat, wheat flour, semolina, and other wheat products, not specially provided for in this section: *Provided*, That wheat shall be subject to a duty of 10 cents per bushel, that wheat flour shall be subject to a duty of 45 cents per barrel of 196 pounds, and semolina and other products of wheat, not specially provided for in this section, 10 per cent ad valorem when imported directly or indirectly from a country, dependency, or other subdivision of Government which imposes a duty on wheat or wheat flour or semolina imported from the United States.

The importers protested, incorporating in the protest the following claim:

The wheat imported from Australia, described in the entry specified below, on which you charged us duty at the rate of 10¢ per bushel under the proviso in par 644, is entitled to free entry as the Amendment to the Tariff of the Commonwealth of Australia, providing for the Free Entry of wheat imported into that country went into force August 10, 1917, thirteen days before the importation into the United States of the wheat in question.

In connection with this claim it is agreed that at the time of importation under the law of Australia wheat imported thereinto from the United States was entitled to free entry, but that wheaten flour and grain prepared or manufactured, "not elsewhere included" (which quoted expression means, as we understand, about the same as "not specially provided for" in our tariff laws), including phosphorized wheat, were dutiable; that on the 26th day of September, 1917, the law of Australia was so amended that the then existing provision for free entry of wheat was extended to include wheaten flour and semolina, while grains prepared or manufactured and phosphorized wheat still remained dutiable, and that this change in the Australian law giving free entry to wheaten flour and semolina was made retroactive to take effect as of August 10, 1917, which retroactive effect was lawful in Australia.

It is also agreed "that in accordance with the provisions of said amendments, if any wheat or wheat flour or semolina had been imported into Australia from the United States between August 10 and September 26, 1917, and a customs duty had been imposed thereon by the Australian government, such duty would have been remitted, or refunded if paid."

Upon these facts the Board of General Appraisers overruled the protest and importers appealed.

On their behalf it is claimed that the provisions of paragraph 644 "should be read distributively and so construed as to provide a countervailing duty on wheat only when the exporting country makes American wheat dutiable, and a duty on wheat flour only when such

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country makes American flour dutiable," and so on as to the other articles named in paragraph 644.

Of course, if that contention be upheld it ends the case here in favor of the importers, because at the time of the importation in question here wheat was entitled to free entry in Australia.

While importers' counsel makes the foregoing claim in his brief, no argument or authority is presented to support the same. No sufficient reason for sustaining it is apparent to us.

Paragraph 644 provides that wheat, wheat flour, semolina, and other products of wheat, not specially provided for, shall be dutiable when imported directly or indirectly from a country which imposes a duty "on wheat or wheat flour or semolina imported from the United States."

The phraseology of the paragraph does not support the contention. There is nothing therein to warrant the view that Congress intended to subject wheat to a duty here only when a duty was imposed in the country of its production upon wheat thereinto imported from the United States. The provision is a collective one and not distributive, as it clearly provides that the duty shall be assessed on the named "and other wheat products" imported here in the event that wheat *or* wheat flour *or* semolina is dutiable in the producing country. That is, the imposition of duty in the foreign country upon one of the articles, wheat, wheat flour, or semolina, at once brings into operation the countervailing duty provision of the paragraph.

We agree with the Board of General Appraisers that this claim is without merit, and pass to the contention which is more forcibly urged by importers' counsel, that by virtue of the retroactive effect of the change in the Australian tariff law this importation of wheat, although dutiable at the time of entry and when the estimated duties were paid, became entitled to free entry before the date of final liquidation solely because in the interim the lawmaking department of Australia saw fit to change its tariff law and give the same a retroactive effect.

Without entering into any elaborate discussion of the question, we are of opinion that this view ought not to be upheld.

Obviously the countervailing provisions of paragraph 644 relate to the state of the law in the foreign country of production at the time of importation here of the named merchandise therefrom. In substance this provision is that wheat and the other named products may be imported free of duty into this country if the country in which they are produced and from which they are directly or indirectly imported allows like free entry of wheat and its products if thereinto imported from the United States; but if such entry is not allowed in the foreign country a duty is imposed here on the importations therefrom.

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One manifest purpose of paragraph 644 was to invite other countries to repeal their respective laws taxing wheat and its products thereinto imported from this country and to promote the acceptance of the invitation by the imposition of duties on wheat and its products imported here from such other countries. So far as Australia is concerned, this purpose has apparently been accomplished. It rested with that country to accept the invitation and enjoy the benefits accruing therefrom whenever it saw fit, but there is no provision in our law which allows Australia to antedate its acceptance and thereby become entitled to enjoy retrospective benefits here.

The agreed fact that, in accordance with the provisions of its retroactive amendment, Australia would remit if unpaid, or would refund if paid, duties on wheat and the other named products, if any, thereinto imported from this country between August 10 and September 27, 1917, makes no difference. That is purely a matter of domestic policy, and imposes no corresponding obligations upon this Government. There is, however, nothing to show that any importations of the kind suggested were made, and it is quite clear that the natural effect of the Australian law, prior to its amendment, would be to discourage the export of wheat products, not natural wheat, from this to that country.

If, as the appellants contend, "the board's decision leaves to the Australian importer the full benefit of the retroactive statute, but denies it to the American importer," thereby resulting in unfair discrimination against the latter, we think the answer is that Australia is the place to seek relief from the injurious effects of its retroactive statutes, if any there be. At any rate, the customs authorities and the courts here are powerless to grant relief unless our statutes so authorize.

The tariff taxes imposed by our law attach immediately upon entry of the merchandise here to be finally liquidated and collected in due course, and this liability can not be discharged or affected by foreign retroactive legislation.

If the principle of importers' contention be admitted, when would the effective retroactive period end? Might it not as well be one year or more as one month? Would it not be equally applicable to merchandise the duty upon which had been finally liquidated and paid here without protest prior to the enactment there of the retroactive statute?

Again, as the Government suggests, suppose that at the date of the importation here Australia had imposed no duty upon wheat or wheat products, and that afterwards it had enacted a law retroactively imposing such duty, could it be successfully contended that thereby merchandise imported here became subsequently chargeable with a duty

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although at the time of importation it was entitled to and was allowed free entry; and if so, for how long a time would such liability attach?

We think the fallacy of importers' contention is that it ignores the fact that the dutiability of imported merchandise must be determined as of the time of its importation, just as under long-settled law and practice its then condition determines its classification.

Other countries possess no power to change the status of merchandise after it has been imported here, but may, in instances of which paragraph 644 is an illustration, so legislate as to affect importations *thereafter* made.

Importers cite no authority to support their contention, and we know of none.

The case of United States *v.* Laurentide Paper Co. (5 Ct. Cust. Appls. 519; T. D. 35157) while not entirely analogous, nevertheless somewhat indicates the views of this court upon the principle really invoked by the importers here.

The judgment of the Board of General Appraisers is *affirmed.*

(T. D. 39082.)

Horn strips.

UNITED STATES *v.* BRANDT (No. 2132).

1. CONSTRUCTION, PARAGRAPH 511, TARIFF ACT OF 1913—"HORN STRIPS * * * UNMANUFACTURED."

The provision of paragraph 511, tariff act of 1913, for "horn strips * * * unmanufactured" obviously contemplates that some manufacturing process or processes must be applied to the natural horn in order to produce a horn strip, because, of common knowledge, horn does not grow in strips.

2. EVIDENCE—PRESUMPTION FAVORS BOARD'S FINDING—"MANUFACTURES OF * * * HORN"—"HORN STRIPS."

Strips of horn, unpolished and undrilled, with unfinished ends, seeming rather crude, used for ankle supports in shoes, were found by the Board of United States General Appraisers to be "horn strips * * * unmanufactured," under paragraph 511, tariff act of 1913, rather than "manufactures of * * * horn" under paragraph 368. The court, being unable to discover from the record that the board has wrongly interpreted the evidence in finding the facts or misapplied the law to the facts as found, affirms the decision.

United States Court of Customs Appeals, March 31, 1922.

APPEAL from Board of United States General Appraisers, Abstract 44344.

[Affirmed.]

William W. Hoppin, Assistant Attorney General (*Harry M. Farrell*, special attorney, of counsel), for the United States.

Walden & Webster for appellee.

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[Oral argument February 23, 1922, by Mr. Hoppin and Mr. Webster.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

BARBER, Judge, delivered the opinion of the court:

Paragraph 368 of the tariff act of 1913, among other things, imposes duty upon

Manufactures of * * * horn—

while paragraph 511 allows free entry to—

Horns and parts of, including horn strips and tips, unmanufactured.

The issue here is under which of these two paragraphs the merchandise is properly classifiable.

The official exhibit, conceded to be typical of the importation, is a bundle containing more than 500 thin flexible pieces of horn, each piece approximately 4 inches long and a quarter of an inch wide. The ends of a majority of these pieces are roughly curved or rounded, some being very irregular and not rounded; none are square. The flat sides are plain without holes and are relatively smooth, apparently not polished, some sides being smoother than others. They are made from the horn of the buffalo, and may well be called strips.

There is no evidence to show what method or process or kind of implement was used to manufacture them from the original horn except what may be presumed from inspection.

At the present time these strips in their imported condition are used for ankle supports in shoes. They were formerly used in the manufacture of corsets and in robe making.

The merchandise was classified by the collector under paragraph 368. Importer protested, claiming classification under paragraph 511. The Board of General Appraisers upon hearing testimony and considering the exhibits, definitely found that these strips had not been advanced by processes of manufacture beyond the contemplation of the free list paragraph, and therefore reversed the decision of the collector and sustained the protest, from which judgment the Government appeals.

There is no question of commercial designation in the case, nor do we understand there is any question that these pieces of horn are horn strips within the common meaning of the language of paragraph 511. The sole question, therefore, is whether they are unmanufactured within the terms of that paragraph.

Two witnesses testified, one the importer in his own behalf and the other an examiner at the port of New York, who had formerly been employed in the manufacture of cutlery where deer horn was quite extensively used as covers for pocketknives, on behalf of the Government.

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The importer knew nothing as to how these strips were manufactured, but said he had been importing similar articles since 1907, and that they had always been allowed free entry. He produced samples of highly polished horn strips similar in size to the exhibits here, with uniformly rounded ends, and with holes through the same near each end, which he said he had imported during the time and sold to the dressmaker trade, but which he was not now importing, as there was no demand therefor.

The examiner testified that the typical exhibit was strip horn, the ends and surfaces of which, he said, could not be the result of the first process of sawing horn into strips, but how they were produced he did not know. He could not say whether or not they were cut with a knife or a machine from the natural horn. He had, however, he said, seen buffalo-horn strips cruder in appearance than Exhibit I, in that they showed the marks of the saw teeth, were not so uniform in thickness, and had perfectly square ends. In the cutlery business, in which he had been employed, the horn strips and tips used were different from these and were chiefly made from deer horn. He presented certain illustrative exhibits of that material, which he said were regarded as horn strips in that industry. These strips on one side show the natural outside surface of the horn; on the other side they show the marks of the saw teeth; and they are used, as we understand from his testimony, in the manufacture, among other things, of covers for pocketknives. He said that after they had been shaped and finished for such use they were called scales, or knife scales, and were known throughout the trade and bought as horn strips.

Upon this testimony, which is the substance of all that is relevant to the issue, the board came to the conclusion, as above stated, that the strips here had not been advanced by processes of manufacture beyond the provisions of the free-entry paragraph.

That paragraph, it is at once apparent, contemplates that a manufacturing process or processes must be applied to the natural horn in order to produce a horn strip, because, of common knowledge, horn does not grow in strips. As already appears, we are not advised as to the extent of the processes which have been applied to the merchandise before us; neither are we informed as to the trade designation, if any there is, that is applicable thereto. The merchandise itself is clearly strips of horn, and we hesitate to say that it has been advanced beyond a condition that is permissible under paragraph 511.

There is another feature of the case which is worthy of notice and makes in favor of sustaining the judgment below. The tariff act of 1883 contained a free-entry paragraph covering—

> Horn and parts of horns unmanufactured, and horn strips and tips.

In Borgfeldt *v.* Erhardt (41 Fed. 102), decided January 7, 1890, this provision was under consideration. The same tariff act con-

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tained a provision assessing a duty upon horn and all manufactures thereof not specially provided for. The collector had taken duty under that provision upon pieces of horn of India cattle cut into strips, polished, and ready for use as bones or stays for ladies' corsets and dresses, while the importer claimed they were entitled to free entry under the provision for horn strips. On the trial it appeared that the horns were split lengthwise and the solid tips cut off. They were then soaked and put into a hydraulic steam press with a steel plate between the respective layers and pressed down and flattened. Then they were planed into strips of various lengths, cut into uniform lengths, and sorted. Some of the strips were scraped smooth and others polished. Some were allowed to remain with the ends perfectly square, others were rounded off, and near the ends holes were punched.

It was shown by the testimony of many trade witnesses that the merchandise "in any and all of the conditions above mentioned, after being stripped from the horn," was known in the trade and commerce of the country as horn strips prior to the passage of the act of 1883.

The court, by Lacombe, Judge, upon these facts, said in substance that because the word "unmanufactured" was inserted in the middle of the paragraph the natural inference would be that the phrase "horn strips and tips" covered both manufactured and unmanufactured horn strips and tips, provided they had not been so advanced as to have become something else, and also said that in that case it was entirely clear that by reason of the proven commercial designation the merchandise there involved was horn strips within the meaning of the paragraph, and that Congress in enacting the act of 1883 must have so understood and legislated accordingly. The court's judgment was for free entry.

This interpretation was adopted by the Treasury Department (see T. D. 9879, dated February 21, 1890), and therein directions were given that like merchandise should thereafter be allowed free entry. The directions related to pieces of horn polished with a hole at each end and the ends partially rounded, ready for use as corset stays and dress stays. No mention was made of unpolished horn strips.

The tariff act of 1890, paragraph 611, that of 1894, paragraph 511, and of 1897, paragraph 577, contained substantially the same provisions for free entry of horn strips as the act of 1883. Each of the same acts contained paragraphs imposing duty upon manufactures of horn not otherwise provided for.

While the tariff act of 1897 was in force (see T. D. 18588, dated November 23, 1897), the Treasury Department came to the conclusion that pieces of horn polished and ready for use as bones for ladies' corsets and dresses, similar to those referred to in its direc-

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tion of February 21, 1890, were not commercially known as "horn strips," but rather were known as "polished dress bones," and therefore directed that thereafter they be classified as manufactures of horn.

In T. D. 19584 (G. A. 4178) in re Sheldon & Co., dated June 11, 1898, the Board of General Appraisers reviewed the whole matter. It found the merchandise was identical with that involved in the case of Borgfeldt *v.* Erhardt, supra (which it will be noticed was *polished* horn strips), and upon the authority of that case held it entitled to free entry. As to commercial designation, relating to which 11 witnesses testified, it said there was hardly any conflicting evidence. Therefrom it appeared that the merchandise had for many years been known as horn strips, while later it had interchangeably been known as horn bone or dress bone, but, nevertheless, found it to be horn strips.

In the act of 1909, paragraph 589, this provision for free entry of horn strips appears in the same language as in paragraph 511 now under consideration. The only difference between that paragraph and its predecessors is that the word "unmanufactured" has been removed from the middle to the end of the paragraph.

So far as appears, there was no change in the administrative practice under this changed condition of the statute until the Treasury Department on June 9, 1914 (T. D. 34535), directed that polished horn strips, having the ends rounded and drilled, should be classified under paragraph 368 as manufactures of horn.

Again it will be noted that this ruling of the department did not cover merchandise like that at bar, and not until April 5, 1920 (see T. D. 38351), has the department undertaken to collect duty upon such merchandise.

In this last Treasury decision the department stated:

> It has been the practice to classify free of duty, under paragraph 511 of the tariff, horn strips undrilled, which have been cut into uniform lengths, some scraped smooth, some polished, some with ends cut square, and others rounded off.

The department gives no reason for this change in classification, which, if justified, would appear to include the importation in this case.

It may be that pieces of horn like those now before us are not horn strips unmanufactured either in fact or by commercial designation, but upon the record in this case we do not think it should be so held.

The official exhibits are horn strips. To what, if any, extent they have been so manufactured as to advance them from the condition of what the trade regards, or from what might in common parlance be regarded as horn strips unmanufactured, we are unable to say. They are apparently unpolished, have no holes, and to nonexpert eyes appear rather crude.

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The importer comes here with the finding of the Board of General Appraisers in his favor. That tribunal is possessed of as much knowledge as are we on the litigated question. We are unable to discover that it has wrongly interpreted the evidence in finding the facts or has misapplied the law to the facts as found, and its judgment is therefore *affirmed*.

(T. D. 39083.)

Drawings in pen and ink.

UNITED STATES *v.* BERTROSE CO. (No. 2124).

1. RELATIVE SPECIFICITY.

Manifestly the language "Works of art, including * * * pen and ink drawings, * * * not specially provided for," in paragraph 376, tariff act of 1913, is less specific than "original drawings and sketches in pen and ink," in paragraph 652.

2. CONSTRUCTION, PARAGRAPH 652, TARIFF ACT OF 1913—"AND" MEANING "OR."

The intention of the provision of paragraph 652, tariff act of 1913, for "original drawings and sketches in pen and ink or pencil and water colors" is not that a pen-and-ink sketch must also be water colored. The word "and" is used as a term of extension, and has the same meaning as if it were "or."

3. PEN-AND-INK DRAWINGS.

Pen-and-ink drawings in black and white only, original productions of an artist, imported for use as illustrations in a fashion magazine, are admissible free of duty under paragraph 652, tariff act of 1913, as "original drawings * * * in pen and ink," and are not dutiable under paragraph 376 as "Works of art, including * * * pen and ink drawings, * * * not specially provided for."

United States Court of Customs Appeals, March 31, 1922.

APPEAL from Board of United States General Appraisers G. A. 8455 (T. D. 38793).

[Affirmed.]

William W. Hoppin, Assistant Attorney General (*John J. Mulvaney*, special attorney, of counsel), for the United States.

Allan R. Brown for appellee.

[Oral argument February 16, 1922, by Mr. Hoppin and Mr. Brown.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

MARTIN, Judge, delivered the opinion of the court:

The merchandise now in question consists of certain pen-and-ink drawings upon paper or cardboard. The collector assessed duty upon them at the rate of 15 per cent ad valorem under paragraph 376 of the tariff act of 1913, which reads in part as follows:

376. Works of art, including * * * pen and ink drawings, * * * not specially provided for in this section, 15 per centum ad valorem.

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The importer protested against the assessment, claiming free entry for the merchandise under paragraph 652 of the free list, which reads in part as follows:

652. Original paintings in oil, mineral, water or other colors, pastels, original drawings and sketches in pen and ink or pencil and water colors, * * *.

The protest was submitted to the Board of General Appraisers and was sustained, from which ruling the Government appeals.

As already stated, the present articles are pen-and-ink drawings. They therefore respond eo nomine to one of the dutiable enumerations of paragraph 376, and concededly they would be governed thereby unless they be found to respond also to the enumerations of paragraph 652 of the free list. In the latter event the free-list provision would prevail, since it is manifestly the more narrow and specific of the two. The sole question in the case therefore is whether the imported drawings fall within the free-list classification above copied from paragraph 652.

The drawings are in pen and ink and are in black and white only, without coloring in water colors or any other material. They are the original productions of an artist, and are designed for use as illustrations for Harper's Bazar. They represent human figures in artistic poses, with special emphasis upon costume and draperies, and other similar effects. They are finished drawings and are not mere sketches intended for further elaboration.

The importer claims that the drawings thus described answer directly to the free-list enumeration of "original drawings," contained in paragraph 652.

The Government, on the other hand, denies that claim, and contends that the free-list enumeration in question is limited by force of the succeeding words "and water colors" to such original drawings only as are also colored in water colors. And since the present drawings are concededly uncolored, they would not, according to the Government's claim, fall within the provision in question.

The contention of the Government is clearly set out in a decision of the board (by Board 2) reported in the North American Lace Co. case, T. D. 38501 (G. A. 8371), wherein the Government's position as aforesaid was sustained. The decision reads in part as follows:

The articles for which free entry is provided under said provision are described therein as "original drawings and sketches in pen and ink or pencil and water colors." Clearly such provision contemplates water-color drawings which must be original, but which may be sketched in pen and ink or with pencil. The language is plain and unambiguous and does not admit of the application thereto of a strained construction which would seek to interpret the conjunctive word "and" as meaning the same as the disjunctive word "or."

Upon the other hand, the opposite view was taken by the board (by Board 3) in the decision in the instant case now upon appeal, which reads in part as follows:

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We can not accept the meaning attributed to that part of paragraph 652 by Board 2. We think it means that original drawings and sketches in pen and ink are free. Also that original drawings and sketches in pencil, whether the pencil be a water color pencil or a lead pencil, or any other pencil, are free.

We think that the opinion last above copied correctly expresses the true intent of the provision in question. In the first lines of paragraph 652 Congress dealt with the subject of original paintings, and granted free entry to them whether in oil, mineral, water, or other colors. In the following provisions of the paragraph Congress dealt with original pictures produced by delineation as distinguished from painting. The first enumeration of that class is "pastels," which are defined to be "pictures drawn with colored crayons." Next comes the provision now in question, for "original drawings and sketches in pen and ink or pencil and water colors." It seems clear that this provision was designed primarily to favor and benefit the art and practice of original drawing and sketching, whether with pen or pencil, and that the reference therein to water colors was of a permissive rather than mandatory character. Accordingly the free admission of an original drawing or sketch would not depend upon the presence or absence of water coloring thereon.

The opposite interpretation of the provision would convert it into one primarily for water-color productions, with drawing or sketching in pen and ink or pencil as merely a permissive feature thereof. This statement is exemplified by the quotation above taken from the decision of Board 2, wherein it is said that the provision "contemplates water-color drawings which must be original, but which may be sketched in pen and ink or with pencil."

We think, therefore, that the final phrase "and water colors," contained in the provision should be interpreted as a permissive term rather than an exclusive and restrictive one. This view is so convincingly supported by the manifest intendment of the paragraph that we feel justified in reading the conjunctive word "and" of the phrase as if it were written "or." The rule permitting this construction in proper cases is too familiar to require a citation of authorities.

This conclusion is consistent with the opinion of this court in American Colortype Co. *v.* United States (9 Ct. Cust. Appls. 212, 213; T. D. 38046), wherein it was said with reference to the provision now in question:

But the second enumeration contains a limitation not found in the first, which is that it shall apply only to such pictures as are drawn or sketched in pen and ink or pencil, even though they be colored in water colors.

The foregoing expression "even though they be colored in water colors," is equivalent to saying "notwithstanding that they be colored in water colors," and clearly implies that the absence of

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water color upon a drawing would not alone prevent its free entry under the classification in question. It is proper to note, however, that the issue involved in the former case differed essentially from that which is presented in this, and that the foregoing comment was therefore incidental in so far as the present issue is concerned.

In accordance with the foregoing views we hold that the original drawings now in question were entitled to free entry, and the board's decision to that effect is *affirmed*.

(T. D. 39084.)

Sugar-drying machines.

CATTON, NEILL & CO. (LTD.) v. UNITED STATES (No. 2130).

EVIDENCE, SUFFICIENCY.

The testimony of a witness with considerable knowledge of sugar-drying machinery that he knew the machinery at bar to be used for this purpose and did not know of any other purpose for which it was used is sufficient to establish that such machinery is chiefly or exclusively used in this country in the manufacture of sugar and to fix its classification as such under paragraph 391, tariff act of 1913.

United States Court of Customs Appeals, March 31, 1922.

APPEAL from Board of United States General Appraisers, T. D. 38746 (G. A. 8442).

[Reversed.]

Frank L. Lawrence and *Thomas M. Lane* for appellants.

William W. Hoppin, Assistant Attorney General (*Samuel Isenschmid*, special attorney, of counsel), for the United States.

[Oral argument February 17, 1922, by Mr. Lane and Mr. Hoppin.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

MARTIN, Judge, delivered the opinion of the court:

The merchandise covered by this appeal consisted of certain centrifugal machines which were imported at the port of Honolulu for use in the manufacture of sugar upon Hawaiian plantations.

The collector assessed duty upon the main parts of the machines at the rate of 20 per cent ad valorem under the general provision for manufactures of metal in paragraph 167 of the tariff act of 1913. Certain ball and roller bearings, however, were assessed at the rate of 35 per cent ad valorem, under the eo nomine provision for such articles in paragraph 106 of the act.

The importers protested against the assessment, claiming that the articles were knocked-down entireties, which were entitled to free entry as "machinery for use in the manufacture of sugar," under paragraph 391 of the act.

That paragraph reads as follows:

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FREE LIST.

391. Agricultural implements: Plows, tooth and disk harrows, headers, harvesters, reapers, agricultural drills and planters, mowers, horserakes, cultivators, threshing machines, cotton gins, machinery for use in manufacture of sugar, wagons and carts, and all other agricultural implements of any kind and description, whether specifically mentioned herein or not, whether in whole or in parts, including repair parts.

The protest was tried before the Board of General Appraisers and was overruled. The importers thereupon appealed.

At the trial the importers called and examined but a single witness, and the Government called none. Accordingly, the only evidence before the board consisted of the testimony submitted on behalf of the protest, and the question arose whether that was sufficient to establish a prima facie case in favor of the importers. The board ruled that the evidence fell short of that measure, and this appeal calls for a review of that decision.

It is agreed by the parties that the free-list provision for "machinery for use in the manufacture of sugar" covers or includes only such machinery as is in general use chiefly or exclusively in this country in the manufacture of sugar. See United States *v.* Boker (6 Ct. Cust. Appls. 243; T. D. 35472); United States *v.* American Express Co., (id. 494; T. D. 36124); Brown *v.* United States (7 id. 309; T. D. 36871); Richardson *v.* United States (8 id. 179; T. D. 37289), and cases cited. The controversy between the parties, therefore, resolves itself into a question concerning the force and effect which should be given to the testimony of the importers' witness in order to determine whether it was sufficient to overcome the presumption in support of the assessment, and establish a prima facie case in favor of the protestant.

The witness, Mr. Gartley, is vice president and manager of C. Brower & Co., sugar agents, and for the last 10 years has had charge of various sugar plantations and refineries in the Hawaiian Islands. He is also president of Catton, Neill & Co., of Honolulu, who have large machine shops there and manufacture sugar machinery of all kinds, acting also as agents for other manufactories of special articles of that kind. The witness described in detail the machinery now in question, stating that he had ordered it according to certain specifications for use as machinery in the manufacture of sugar, that it was in actual use as such, that it was peculiarly adapted to that use, and that in the Hawaiian Islands such machinery was used for no other purpose. The witness said that he had no knowledge of any other use for which the machines were adapted, adding, however, "There may be something for which they might be used, but I have no personal knowledge of such use." The witness said, however, that he had personal knowledge of the fact that the machines were incapable of use as cream separators or as laundry machinery.

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The foregoing testimony stands uncontradicted in any manner, and it certainly tends very strongly to support the claim made by the importers. The Government, however, contends that it fails to establish a prima facie case when considered in the light of the following questions and answers which are found in the testimony of the witness:

Q. And there are centrifugal machines with top suspension that are used for purposes other than sugar?—A. Yes, sir.

Q. What would you say they are?—A. In chemical factories, I should imagine, drying chemicals, something of that kind. I am not personally acquainted with it at all. But they could not be used for a laundry machine, that I know.

Q. So far as your own personal knowledge goes, you would not be in a position to swear that most of the machines of the kind that you import were actually used in this country for sugar making?—A. No.

Q. You could not swear to that.—A. No.

* * * * * * *

Q. I understand you to say, however—I want to get this straight—I understood you to say, however, that so far as your own personal knowledge went you would not be prepared to swear that the largest proportion of centrifugal machines of this kind were not usable for purposes in the United States—for purposes other than sugar making; suitable for use?—A. I could not swear to that.

The Government contends that the foregoing testimony is a confession of ignorance upon the part of the witness concerning the uses to which such machinery might be applied, since he could not say of his own personal knowledge that there was no other use in this country for the machines equal to their use in the manufacture of sugar.

We do not, however, take that view of the force and effect of the testimony. It is fair to believe that the witness was a business man of considerable experience with such machinery, and if there existed an equal or major use thereof other than in sugar making it is probable that he would have known of that fact. His lack of knowledge of such another use was therefore probative to the effect that there was no other such use. This view was expressed by this court, by Judge Smith, in Klipstein *v.* United States (1 Ct. Cust. Appls. 122, 124; T. D. 31120) in the following words:

That testimony was, it is true, negative in character as to whether the oil might not be put to some other use than that of dressing leather, but it was direct, affirmative, and positive, first, that it was used for dressing leather in order to give it the distinctive odor of Russia leather; second, that in all his years of experience with the oil the witness knew of no other use for it; and third, that it was imported by his firm to be sold and was sold exclusively to tanners and jobbers in tanning materials. The mere fact that the merchandise might possibly have some other use than that specified is not sufficient of and by itself to overcome or counterbalance the probative effect of the sworn declaration of a single witness of ten years' experience with the goods that they have but one use because he knows of but one use for them.—United States *v.* Wells (77 Fed. 411).

In this view of the case we conclude that the uncontradicted and unimpeached testimony of the only witness in the case was sufficient

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to make out a prima facie case in support of the protest. We do not overlook the rule which favors the decision of the board upon the weight of the evidence in case of contradictory testimony, but in the present instance there is no conflict of evidence, the sole question being the interpretation proper to be placed upon testimony which is undisputed in any particular.

We conclude, therefore, that the testimony was sufficient to make out a prima facie case to the effect that the articles in question, including the ball and roller bearings, were entireties in a knocked-down condition, and were "machinery for use in the manufacture of sugar," thereby responding to the enumeration of such merchandise in paragraph 391 of the free list.

The decision of the board is accordingly reversed, and the case is remanded.

Reversed.

(T. D. 39085.)

Entireties—Engines and fans.

COLUMBIA SHIPBUILDING CO. ET AL. *v.* UNITED STATES (No. 2138).

ENTIRETIES—ENGINES AND FANS.

Steam engines and fans, designed to be operated together for supplying forced draft to boilers of vessels, each engine and fan being complete in itself and capable, by minor alterations in the couplings, of being used separately, should not have been treated as entireties and assessed as miscellaneous manufactures of metal under paragraph 167, tariff act of 1913. The claim of the protest for segregation and assessment of the engines eo nomine under paragraph 165 should have been sustained by the Board of United States General Appraisers.

United States Court of Customs Appeals, March 31, 1922.

APPEAL from Board of United States General Appraisers, Abstract 44417.

[Modified.]

Comstock & Washburn (*J. Stuart Tompkins* of counsel) for appellant.

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

[Oral argument February 24, 1922, by Mr. Tompkins and Mr. Hoppin.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

MARTIN, Judge, delivered the opinion of the court:

The merchandise involved in this case consisted of certain steam engines and Howden fans or blowers, which were designed to be operated together for supplying a forced draft to the boilers of vessels.

The articles were classified for duty as entireties and were assessed as such at the rate of 20 per cent ad valorem, under the general provision for manufactures of metal contained in paragraph 167 of the tariff act of 1913.

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The importers protested against the assessment, presenting two alternative claims in the protest, first claiming free entry for the merchandise as materials or articles for the construction or repair of vessels under subsections 5 and 6, paragraph J, Section IV of the act; and, second, claiming that if not entitled to free entry as aforesaid the merchandise should nevertheless be segregated for duty and the steam engines should be assessed at the rate of only 15 per cent ad valorem under the eo nomine provision for "all steam engines" in paragraph 165 of the act.

The protest was submitted upon evidence to the Board of General Appraisers, and was overruled as to both of its claims. This appeal was taken from that decision.

The importers now abandon their claim for free entry of the merchandise, and they no longer contest the assessment of 20 per cent ad valorem levied upon the fans. But they insist, however, upon their claim that the steam engines should be classified separately for duty, and assessed at only 15 per cent ad valorem under the eo nomine provision for "all steam engines," contained in paragraph 165 of the act. It may be repeated that the engines and the fans, although invoiced separately, were assessed together at the rate of 20 per cent ad valorem under the provision for manufactures of metal in paragraph 167. And it is obvious that this assessment depends upon the assumption that the steam engines and fans in question were entireties when imported, for otherwise the engines would plainly fall within the eo nomine enumeration of paragraph 165 and be dutiable at 15 per cent ad valorem.

The competing paragraphs read in part as follows:

165. All steam engines, steam locomotives, printing presses, and machine tools, 15 per centum ad valorem; * * *.

167. Articles or wares not specially provided for in this section; * * *; if composed wholly or in chief value of iron, steel, lead, copper, brass, nickel, pewter, zinc, aluminum, or other metal, but not plated with gold or silver, and whether partly or wholly manufactured, 20 per centum ad valorem.

The steam engines and Howden fans in question were not connected together in any manner at the time of importation. When in use they are coupled together, and serve an auxiliary purpose in connection with the main boiler of the vessel. The fan is equipped with a rotating shaft which carries impellers by means of which a draft of air is forced first through a heating chamber and then through the fire box of the boiler. This operation tends, of course, toward economy and efficiency in the combustion of fuel. The fan is upright in form, and when in use is fastened securely to the vessel floor. The power which rotates the fan shaft is transmitted to it by means of the steam engine in question. This is a vertical engine of ordinary type, with cylinder, piston, and rotating shaft. It has no boiler of its own, but is supplied with steam through a tube connecting with

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the main boiler of the vessel. The engine is fastened to the floor near enough to the fan to leave only a clearance of three-eighths of an inch between the respective shaft ends, and these are so constructed that they may readily be connected by means of a coupling and four removable bolts. It is common practice to install a second engine of the same kind in the same manner upon the opposite side of a fan, the shaft ends thereof being similarly in juxtaposition, in order that either engine may be put in service for the operation of the fan in case the other is out of commission for any reason.

Both the engines and fans are constructed in different sizes, and in general the size of an engine has a direct relation to the size of the fan which is driven by it. But this practice is not invariable, for a large engine may operate a small fan, or vice versa, to meet the requirements of available ship space.

The engine and fan are not connected together in any other manner when in use; and they may easily and readily be disconnected by merely removing the temporary bolts and coupling. The engines are capable of use for other purposes, and the fans may be operated by other means of propulsion, although minor alterations would be required in such cases. Each engine is complete within itself as a steam engine, and each fan is complete within itself as a blower fan. The engines range in price from £130 to £386 according to size, and the fans similarly from £148 to £257.

With this description of the articles before us, we conclude that the engines and fans as imported were not entireties, notwithstanding the fact that they were designed to be operated together; for when the articles are installed for use each retains its own name and essential character, and neither one becomes in fact a part of the other. Nor do they then merge or unite so as to form together a new or distinct article having a different name or character. When in use the engine simply performs the function of an engine and retains its name as such, and the fan performs the function of a fan only and retains its separate name also.

It seems clear, therefore, that the engines in question were dutiable under the eo nomine provision for all "steam engines," contained in paragraph 165. A steam engine may be used to operate a pump, a saw, a lathe, or other machinery, and it may transmit power by means of a belt or a power shaft, or by means of a temporary coupling, as in the present case, but so long as it retains its essential characteristics and maintains its separate name and identity as a steam engine it may claim classification for duty as such under the provision in question. And this applies to the engine now in question, for it does the work of a steam engine only, and no reason appears for excluding it from the comprehensive enumeration of "*all* steam engines" in paragraph 165.

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Articles similar to these were before the court in the case of United States *v.* Carlin (10 Ct. Cust. Appls. 83; T. D. 38356) and United States *v.* Reid & Co., id. 85; T. D. 38357). The issue in those cases, however, was restricted to a single claim made by the importers, to wit, a demand for free entry for the articles as shipbuilding articles or materials under subsections 5 and 6 aforesaid, upon which issue judgment went against the importers. The present issue, therefore, was not involved in either of these cases. It is interesting, however, to note incidentally, that the Carlin case involved five several protests, each covering importations of steam engines and Howden fans similar to these, and that in four of them the engines were classified and assessed with duty at 15 per cent ad valorem as steam engines under the eo nomine provision therefor in paragraph 165, the fans at the same time being assessed as manufactures of metal under paragraph 167. The merchandise covered by the fifth Carlin protest, likewise composed of Howden fans and steam engines, was assessed at 20 per cent ad valorem under the general provision for manufactures of metal under paragraph 167. The merchandise involved in the Reid case consisted of Sheldon blowers and steam engines which were neither invoiced nor entered separately and which accordingly were assessed together at 20 per cent ad valorem as manufactures of metal under paragraph 167. The protest claimed free entry for the engines as American goods returned, under paragraph 404 of the act. Since the present issue was not presented in the foregoing cases they can not serve as precedents in the instant case. Nevertheless it is interesting to note that in the case of four of those importations the steam engines were separately assessed with duty as such, which assessment was affirmed by the judgment entry in the case, and that in the other two instances conditions which bore no relation to the present question effectually prevented such an assessment.

In accordance with the foregoing views the decision of the board is modified, being reversed in so far as it relates to the assessment of the steam engines in question, and being otherwise affirmed; and the case is remanded.

Modified.

(T. D. 39086.)

Antidumping act—"Hamburgs" from Switzerland.

T. D. 39025 of February 25, 1922, which published a finding of dumping in the case of "Hamburgs" imported from Switzerland, revoked.

TREASURY DEPARTMENT, *April 22, 1922.*

To Collectors of Customs and Others Concerned:

In view of further information and changed conditions reported to the department, T. D. 39025, dated February 25, 1922, in which was

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published a finding of dumping in the case of "Hamburgs" imported from Switzerland, is hereby revoked.

(106085.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39087.)

Laws and regulations governing the recognition of attorneys, agents, and other persons representing claimants and others before the Treasury Department and offices thereof.

[Circular No. 230.[1]]

TREASURY DEPARTMENT, *April 25, 1922.*

The following statutes relate to the recognition of attorneys, agents, and other persons representing claimants and others before the Treasury Department and offices thereof:

That the Secretary of the Treasury may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his Department, and may require of such persons, agents and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. And such Secretary may after due notice and opportunity for hearing suspend, and disbar from further practice before his Department any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by word, circular, letter, or by advertisement. (Act of July 7, 1884, 23 Stat. 258.)

Whoever, being an officer of the United States, or a person holding any place of trust or profit, or discharging any official function under, or in connection with, any Executive Department of the Government of the United States, or under the Senate or House of Representatives of the United States, shall act as an agent or attorney for prosecuting any claim against the United States, or in any manner, or by any means, otherwise than in discharge of his proper official duties, shall aid or assist in the prosecution or support of any such claim, or receive any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted, in the prosecution of such claim, shall be fined not more than five thousand dollars, or imprisoned not more than one year, or both. (Act of Mar. 4, 1909, sec. 109, 35 Stat. 1107.)

It shall not be lawful for any person appointed after the first day of June, one thousand eight hundred and seventy-two, as an officer, clerk, or employee in any of the Departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said Departments while he was such officer, clerk, or employee, nor in any manner, nor by any means, to aid in the prosecution of any such claim, within two years next after he shall have ceased to be such officer, clerk, or employee. (Sec. 190, Revised Statutes.)

That it shall be unlawful for any person who, as a commissioned officer of the Army, or officer or employee of the United States, has at any time since April 6, 1917, been

[1] Effective April 25, 1922. This circular supersedes Treasury Department Circular No. 230, dated February 15, 1921, as amended June 7, 1921, July 1, 1921, and December 23, 1921.

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employed in any Bureau of the Government and in such employment been engaged on behalf of the United States in procuring or assisting to procure supplies for the Military Establishment, or who has been engaged in the settlement or adjustment of contracts or agreements for the procurement of supplies for the Military Establishment, within two years next after his discharge or other separation from the service of the Government, to solicit employment in the presentation or to aid or assist for compensation in the prosecution of claims against the United States arising out of any contracts or agreements for the procurement of supplies for said Bureau, which were pending or entered into while the said officer or employee was associated therewith. A violation of this provision of this chapter shall be punished by a fine of not more than $10,000 or imprisonment for not more than one year, or both. (Act of July 11, 1919, 41 Stat. 131.)

That section five hundred and fifty-eight of the Code of Law for the District of Columbia, relating to notaries public, be amended by adding at the end of said section the following: "*Provided*, That the appointment of any person as such notary public, or the acceptance of his commission as such, or the performance of the duties thereunder, shall not disqualify or prevent such person from representing clients before any of the Departments of the United States Government in the District of Columbia or elsewhere, provided such person so appointed as a notary public who appears to practice or represent clients before any such Department is not otherwise engaged in Government employ, and shall be admitted by the heads of such Departments to practice therein in accordance with the rules and regulations prescribed for other persons or attorneys who are admitted to practice therein: *And provided further*, That no notary public shall be authorized to take acknowledgments, administer oaths, certify papers, or perform any official acts in connection with matters in which he is employed as counsel, attorney, or agent or in which he may be in any way interested before any of the Departments aforesaid." (Act of June 29, 1906, 34 Stat. 622. Held by 26 Opinions of Attorney General, 236, to apply to all notaries who may practice before the Departments.)

The head of each Department is authorized to prescribe regulations, not inconsistent with law, for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it. (Sec. 161, Revised Statutes.)

Pursuant to the authority contained in the above-quoted statutory provisions, the following rules and regulations are prescribed:

1. *Committee on Enrollment and Disbarment.*—(*a*) A committee on enrollment and disbarment is hereby created, consisting of the Chief Clerk of the Treasury Department, who shall be a member *ex officio*, and six other members, one of whom shall be detailed from the office of the Secretary of the Treasury and shall act as chairman, three from the office of the Commissioner of Internal Revenue, and one each from the office of the Solicitor of the Treasury and the Division of Customs. The Chief Clerk of the Treasury Department shall have custody of all papers, records, rolls, etc., belonging to the committee, and shall, in the absence of the designated chairman, act as chairman. The members of the committee shall serve for the calendar year and shall perform the duties herein prescribed in addition to their other duties. The committee shall meet regularly on the first Tuesday of each month, if a business day, and shall

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meet specially on other days at the call of the chairman. Four members shall constitute a quorum.

(*b*) The committee shall receive and consider applications to be recognized as attorney, agent, or other representative before the Treasury Department or offices thereof; receive complaints against those enrolled; conduct hearings, make inquiries, perform other duties as prescribed herein, and do all things necessary in the matter of proceedings for the enrollment, discipline, suspension or disbarment of attorneys, agents, or other representatives, pursuant to these regulations; and it shall submit its recommendations therein to the Secretary of the Treasury for approval.

2. *Applications for enrollment.*—Applicants for enrollment pursuant to these regulations shall submit to the Secretary of the Treasury an application, properly executed, on Form 23 attached hereto. Applications in any other form will not be considered. The statements contained in the application must be verified by the applicant. The applicant must also take the oath of allegiance, and to support the Constitution of the United States as required by section 3478, Revised Statutes. A person who can not take the oath of allegiance, and to support the Constitution of the United States, can not be enrolled. Members of the bar of a court of record will apply for enrollment as attorneys; all others will apply for enrollment as agents. The Secretary of the Treasury may in any case require other and further evidence of qualification. Applicants will be notified of the approval or disapproval of their applications. All applications for enrollment must be individual, and individuals who practice as partners should apply for enrollment as individuals and not in the partnership name. An individual who has been enrolled may, however, represent claimants and others before the Treasury Department in the name of a partnership of which he is a member or with which he is otherwise regularly connected. Except as hereinafter provided in paragraph 3, a corporation can not be enrolled and attorneys or agents will not be permitted to practice before the Treasury Department for account of a corporation which represents claimants and others in the prosecution of business before the Treasury Department. Persons applying for enrollment who propose to act for such a corporation in the prosecution of claims and other business before the Treasury Department will be subject to rejection, and enrolled attorneys or agents who act for a corporation in representing claimants and others in the prosecution of claims and other business will be subject to suspension from practice, as to such claims or business.

3. *Customhouse brokers.*—(*a*) The act of June 10, 1910 (36 Stat. 464, T. D. 30789), provides in part that persons, copartnerships, associations, joint-stock associations, and corporations may be licensed as customhouse brokers by the collector or chief officer of customs at

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any port of entry or delivery to transact business as such customhouse broker in the collection district in which such license is issued. Customhouse brokers so licensed require no further enrollment under these regulations for the transaction of business within their respective collection districts, but for the representation of a claimant before the Treasury Department in the city of Washington application for enrollment as attorney or agent must be made in conformity with the requirements of the preceding paragraph, and otherwise in accordance with these regulations, except that if a customhouse broker, so licensed in a collection district, is a copartnership, association, joint-stock association, or corporation, its claims or other business may be prosecuted in its name before the department in the city of Washington by an accredited member or representative, who must, however, be first duly enrolled in accordance herewith.

(*b*) The provisions of sections (*b*) and (*c*) of paragraph 6 hereof shall apply to customhouse brokers only as to the application to themselves of designations which might imply official capacity or connection, and as to solicitation of claims or business before the Treasury Department and suggestion of previous connection with the Treasury Department or acquaintance with its officers or employees.

4. *Restriction of right to be heard to parties and enrolled attorneys and agents.*—(*a*) The committee on enrollment and disbarment shall maintain in the office of the Chief Clerk, Treasury Department, a roll of attorneys and agents entitled to practice before the Treasury Department. It shall likewise maintain lists of those whose applications for enrollment have been rejected and those who have been suspended or disbarred. The Chief Clerk shall furnish copies of said roll and lists, with such additions thereto or subtractions therefrom as may be made from time to time, to the several bureaus, offices and divisions of the Treasury Department, and upon request may furnish information as to whether or not any person is enrolled as an attorney or agent before the Treasury Department.

(*b*) All bureaus, offices and divisions of the Treasury Department are hereby prohibited from recognizing or dealing with anyone appearing as attorney or agent unless the name of such attorney or agent appears upon the list of those entitled to practice before the Treasury Department, provided, however, that the head of any bureau, office, or division may, in his discretion, temporarily recognize such representative pending action upon his application for enrollment, provided his name does not appear on the list of those whose applications for enrollment have been rejected or on the list of those who have been suspended or disbarred. It shall be the duty of the several bureaus, offices and divisions of the Treasury Department to ascertain in each case whether the name of one appearing before them in a representative capacity appears on the roll of those entitled to practice,

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whether such representative has been suspended or disbarred, and whether he is ineligible under section (*c*) of this paragraph or under section 190 of the Revised Statutes. Nothing herein contained shall preclude individual parties or members of firms, or officers of corporations, or authorized employees of firms or corporations, from appearing, upon proper identification, as representatives of their own interests or of their respective firms or corporations in any matter before the department in which such person, firm or corporation is concerned as a principal; but attorneys, counsel, solicitors, accountants and other agents for such persons, firms or corporations must be enrolled.

(*c*) No attorney or agent shall be permitted to appear in a representative capacity before the Treasury Department, or any of the bureaus, offices, units, divisions, subdivisions, or other agencies thereof, in regard to any claim, application for reaudit, refund, abatement or reduction in tax assessed, or any other matter, to which he gave actual personal consideration, or as to the facts of which he had actual personal knowledge, while in the service of the Treasury Department.

The foregoing regulation is in addition to the inhibition contained in section 190 of the Revised Statutes of the United States, and does not authorize the appearance of an attorney or agent in the prosecution of any claim that would be prohibited by that section.

5. *Suspension and disbarment proceedings.*—(*a*) If any officer or employee of the Treasury Department, whether in the city of Washington or elsewhere, has reason to believe, or if the complaint is made to him, that an enrolled attorney or agent has violated any provision of the laws and regulations governing practice before the Treasury Department or otherwise engaged in improper practice, he shall promptly make written report thereof through the proper channels to the committee on enrollment and disbarment. The committee may, on the basis of any such complaint, upon its own motion, or otherwise upon reasonable cause, institute proceedings for suspension or disbarment against any enrolled attorney or agent. Notice thereof, signed by the Secretary or Undersecretary of the Treasury, shall be sent by mail to such attorney or agent at the address under which he is enrolled, and such notice shall state the charge or charges made, and give the place and time of hearing, which shall be not less than thirty nor more than forty days from the date of mailing the notice. The respondent may file with the committee an answer in duplicate, which shall be verified, at least five full days before the time of the hearing, and the complaint may, in the discretion of the committee, be furnished with the duplicate thereof. The committee may, in its discretion, extend the time for answer, or postpone the date of hearing, or adjourn any hearing from time to time as may be

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necessary. An enrolled attorney or agent against whom proceedings for suspension or disbarment have been instituted as herein provided may, subject to the approval of the Secretary of the Treasury, be suspended for the time being from practice before the Treasury Department, pending the conclusion of the proceedings.

(*b*) The committee shall conduct hearings according to such rules of procedure as it shall determine, and may receive evidence in such form as it may deem proper. The respondent may be represented by counsel. The testimony of witnesses may, in the discretion of the committee, be required to be under oath, and may be stenographically reported and transcribed. Depositions for use at a hearing may, with the approval of the committee, be taken by either party upon oral or written interrogatories before any officer duly authorized to administer an oath for general purposes, upon ten days' written notice if the deposition is to be taken within the District of Columbia, and upon twenty days' written notice if it is to be taken elsewhere. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served with the notice, and copies of any written cross-interrogatories shall be mailed to the opposing party or his counsel at least ten days before the time of taking the deposition.

(*c*) The committee shall, promptly after the conclusion of the hearing, or, if the respondent does not appear in person for the hearing, promptly after the date set therefor, submit to the Secretary of the Treasury a copy of the notice of hearing, the complaint, answer (if any), the record of the hearing (if any), and any written findings of fact by a majority of the committee, together with a recommendation either that the charges be dismissed, or that the respondent be reprimanded, suspended for a given period of time, or disbarred. The findings and recommendation shall be signed by all members of the committee agreeing thereto. Members of the committee dissenting therefrom shall submit statements of their reasons therefor. If any members of the committee were not present at the hearing the fact shall be stated.

(*d*) Upon the suspension or disbarment of an attorney or agent, notice thereof shall be given by the committee to the heads of all bureaus, offices and divisions of the Treasury Department and to the other branches of the Government, and, unless duly reinstated, such person shall not thereafter be recognized as an attorney or agent in any claim or other matter before the Treasury Department or any office thereof.

6. *Causes for rejection, suspension, or disbarment.*—(*a*) The Secretary of the Treasury may, as herein provided, suspend or disbar any enrolled attorney or agent shown to be incompetent or dis-

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reputable, or who refuses to comply with these rules and regulations, or who shall with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by word, circular, or letter, or by advertisement. It shall be the duty of every attorney and agent to use the utmost diligence in furnishing evidence required in matters presented to the Treasury Department, and the use of any means whereby the final settlement of a claim or other business pending before the Treasury Department is unjustifiably delayed may be sufficient cause for suspension or disbarment. If any enrolled attorney or agent shall knowingly employ as correspondent or subagent in any matter pending before the Treasury Department a person who is at the time denied enrollment, or suspended or disbarred from practice before the department, such attorney or agent himself may be suspended or disbarred.

(*b*) Advertising by enrolled attorneys or agents which describes their capacity or ability to render service as enrolled attorney or agents is forbidden. Letterheads, business cards, and insertions in directories, newspapers, trade journals, or other publications should set forth only the name and address of the attorney or agent and a brief description of his practice. The description should not do more than state the nature of the attorney's or agent's business, that is to say, whether he practices as an attorney, accountant or agent, and, if desired, any special field of service or practice covered. The use by attorneys, agents, or others of adjectives or other terms which might imply official capacity or connection with the Government or any of its departments is specifically forbidden.

(*c*) The solicitation of claims or other business as attorney or agent for others before the Treasury Department by circulars, advertisements or other means, including personal letters, communications or interviews not warranted by previous business or personal relations with the persons addressed, is forbidden. *Advertising or solicitation, which makes any suggestion of previous connection with the Treasury Department or acquaintance with its officials or employees, or any reference to the fact of enrollment, is specifically forbidden.*

(*d*) Statements or implications to the effect that an attorney or agent is in position by reason of past experience, past official connection, or personal association with the Treasury Department or any officials or employees thereof, directly or indirectly to influence the disposition of business in the Treasury Department, and statements or implications to the effect that the agent or attorney is able to obtain information or consideration that is not available to the public in regard to such business, are forbidden.

(*e*) While contingent fees may be proper in some cases before the department, they are not generally looked upon with favor and may

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be made the ground of suspension or disbarment. Both their reasonableness in view of the services rendered and all the attendant circumstances are a proper subject of inquiry by the department. The Commissioner of Internal Revenue or the head of any other Treasury bureau or division of the Secretary's office may at any stage of a pending proceeding require an attorney or agent to make full disclosure as to what inducements, if any, were held out by him to procure his employment and whether the business is being handled on a contingent basis, and, if so, the arrangement regarding compensation.

(*f*) Violation of any of the foregoing regulations is declared cause for suspension or disbarment of any attorney or agent enrolled to practice before the Treasury Department, while violation thereof by any person applying for enrollment as attorney or agent will be cause for rejection of his application.

(*g*) Upon notification that an attorney or agent enrolled in the Treasury Department has been disbarred from practice before some other branch of the Government, the committee shall forthwith send to such attorney or agent, in the same manner as prescribed for notice of hearing, an order signed by the Secretary of the Treasury to show cause within thirty days why he should not be disbarred from practice before the Treasury Department; and thereafter the committee shall proceed in such case in the same manner as if a notice of hearing had been sent.

(*h*) The above enumeration of causes for rejection, disbarment or suspension shall not exclude other causes which the Secretary may reasonably deem sufficient in any case.

7. *Authority to prosecute claims; delivery of checks, drafts, and warrants.*—(*a*) A power of attorney from the principal in proper form may be required of attorneys or agents by heads of bureaus, offices and divisions, in any case. *In the prosecution of claims involving payments to be made by the United States, proper powers of attorney shall always be filed before an attorney or agent is recognized.* No power of attorney shall be recognized which is filed after settlement made by the accounting officers, even though the settlement certificate may not yet have issued, unless such power of attorney recites that the principal is fully cognizant of such settlement and of the balance found due.

(*b*) In all cases originally filed in the Treasury Department and audited and allowed by the accounting officers, payable from appropriations thereafter to be made by Congress, the drafts, warrants, or checks issued for the proceeds of such claims shall be made to the order of the claimant, and may be delivered to the attorney or agent legally authorized to prosecute the same, upon his filing in the de-

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partment, after the allowance of the claim, the ascertainment of the amount due, and its submission to Congress for an appropriation, written authority executed in proper legal form for delivery of such draft, warrant, or check. The authority so filed shall describe the claim by the number of certificate of settlement, the amount allowed, the title of appropriation from which to be paid, the date when submitted to Congress, and the number of the executive document in which it is contained. Drafts, warrants, or checks issued for the proceeds of other like cases audited and allowed by the accounting officers but which are to be paid from appropriations available at the time of allowance shall also be made to the order of the claimant and may be delivered to the attorney or agent filing written authority, executed in proper legal form, to receive them. The Secretary of the Treasury reserves the right, however, in any case to send any draft, warrant, or check to the claimant direct. (See also paragraph 9 hereof.)

(*c*) Drafts, warrants, or checks issued in payment of amounts allowed by Congress in favor of corporations and individuals and appropriated for in private or special acts, and for the payment of all other claims presented directly to Congress and prosecuted before its committees, shall be made to the order of claimants and delivered to them in person or mailed to their actual post-office addresses.

(*d*) Drafts, warrants, or checks issued in payment of judgments rendered by the Court of Claims, United States courts, or other courts shall be made to the order of the judgment creditor and delivered to or sent in care of the attorney certified by the court to be the attorney of record upon his filing in the department written authority, executed in proper legal form, after the date of the rendition of the judgment, for such disposition of such draft, warrant, or check.

(*e*) When judgments of the Court of Claims, United States courts, or other courts are paid by the United States, a notice of such payment, giving number, class, and date of the draft, warrant or check, and amount paid, will be sent by the Treasury Department to the clerk of the court in which the judgment was entered in order that payment may be entered on the docket of the court.

8. *Substitution of attorneys or agents and revocation of authority.*—(*a*) Substitution of attorneys or agents may be effected only on the written consent of the attorney or agent of record, his principal, and the attorney or agent whom it is desired to substitute, and in all cases only with the assent of the head of the bureau, office or division concerned; provided that where the power of attorney under which an attorney or agent of record is acting expressly confers the power of substitution, such attorney or agent, if in good standing before the department, may, by a duly executed instrument, substitute

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another in his stead, such other, however, to be recognized as the attorney or agent only with the assent of the head of the bureau, office or division concerned.

(*b*) If a firm dissolve, or those associated as attorneys or agents by virtue of a power of attorney contest the right of either to receive a draft, warrant or check, the principal only shall thereafter be recognized, unless the members or survivors of such firm, or the associates in such power of attorney, file a proper agreement showing which of such members, survivors or associates may continue to prosecute the matter and may receive a draft, warrant or check; and in no case shall a final settlement of the matter or action toward the transmission of a draft, warrant or check to the principal be delayed more than sixty days by reason of the failure to file such agreement.

(*c*) The revocation by a principal or his legal representatives of authority to prosecute a matter will not be effective, so far as the Treasury Department is concerned, without the assent of the head of the bureau, office or division before which the matter is pending. Where a matter has been suspended pending the furnishing of evidence for which a call has been made on an attorney or agent, failure to take action thereon within three months from the date of suspension may be deemed by the administrative officer before whom the case is pending cause for revocation of the authority of such attorney or agent without further notice to him.

9. In the settlement of claims of officers, soldiers, sailors, and marines, or their representatives, and all other like claims for pay and allowances within the jurisdiction of the General Accounting Office, the draft, warrant or check for the full amount found due shall be delivered to the payee in person or sent to his bona fide post-office address (residence or place of business) in accordance with the provisions of the act of June 6, 1900 (31 Stat. 637).

10. This circular supersedes the regulations promulgated by Treasury Department Circular No. 230 of February 15, 1921, as amended June 7, July 1, and December 23, 1921, relating to the recognition of attorneys, agents, and others.

11. These regulations shall apply to attorneys, agents, and others representing claimants and others before the Treasury Department in the city of Washington or elsewhere, with the exception as to customhouse brokers set forth in paragraph 3, and shall be effective from and after the twenty-fifth day of April, 1922. This circular shall apply to all unsettled matters then pending in this department, or which may thereafter be presented or referred to the department or offices thereof for adjudication, and shall be applicable to all those now enrolled to practice before the Treasury Department as attorney or agent, provided that nothing herein contained shall be construed to abrogate any rules or orders of the General Accounting Office

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relating to the fees of attorneys, agents, or others, or to require those now enrolled again to apply to be enrolled.

12. The Secretary of the Treasury may withdraw or amend at any time or from time to time all or any of the foregoing rules and regulations, with or without previous notice, and may make such special orders as he may deem proper in any case.

A. W. MELLON,
Secretary of the Treasury.

Treasury Department, Chief Clerk. Form 23. (Revised April 25, 1922.)

APPLICATION FOR ADMISSION TO PRACTICE BEFORE THE TREASURY DEPARTMENT.

The Honorable
THE SECRETARY OF THE TREASURY.

SIR:

I, ... residing at ..... with my office at ..... hereby apply for enrollment to be recognized as ..... to represent others before the Treasury Department.
(Attorney or agent.)

1. I am a citizen of the United States (if naturalized, state where and when: Place ..... Date .....), and the date of my birth is .....

2. I am a member of the bar of..... and attach hereto a certificate to that effect from said court.

I am now in active practice and in good standing in said court.

3.[1] I am ..... engaged in business under the name of .....
(State nature of business.)
and familiar with the laws, rules, and regulations of the Treasury Department. I am qualified to act as the representative of others and render them valuable service, particularly in matters relating to ..... because of my education, training, and business experience, which have been as follows: (State in chronological order, giving dates.)

Preliminary education: Dates.

.....

.....

Professional or technical education:

.....

Practical business experience:

.....

Professional or technical experience:

.....

Particular qualifications rendering applicant competent to advise and assist claimants in presentation of their cases:

.....

4. I have never been rejected, suspended, or disbarred from appearing as attorney or agent, or in any other representative capacity, before any branch of the Federal or any State Government or municipality, or any court. (State details of any exception) .....

5. I have never been an officer or employee of the United States.

I have been an officer or employee of the United States as follows: (State office or employment, with dates of appointment and separation).....

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[1] Paragraph 3 should be filled in only by persons applying for enrollment as agent.

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6. I have read and noted Treasury Department Circular No. 230, dated April 25, 1922, and particularly paragraph 6 thereof.

7. I have made no previous application to be recognized as attorney or agent before the Treasury Department. (State details of any exception).....

8.[2] I, ..., do solemnly swear (or affirm) that the statements contained in the foregoing application are true and correct; that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely without any mental reservation or purpose of evasion; and that if authorized to represent others before the Treasury Department I will at all times conduct myself strictly in compliance with the laws and regulations governing practice before the Department. So help me God.

(Name) .....
(Address) .....

Subscribed and sworn to before me this .... day of ....., 192...

(Signature of officer) .....
(Official title) .....

[Impress seal here.]

Certificates of character.[3]

I hereby certify that I have known the within-named..... since .....; that during all that time I have known him to be of good moral character and worthy of the trust and confidence of claimants and of the Treasury Department.
(Year.)

.....
.....
(Name and address of person not related to applicant.)
.....
(Date.)

I hereby certify that I have known the within-named..... since .....; that during all that time I have known him to be of good moral character and worthy of the trust and confidence of claimants and of the Treasury Department.
(Year.)

.....
.....
(Name and address of person not related to applicant.)
.....
(Date.)

Indorsement.

WASHINGTON, ..., 192...

The attached application of ..... for enrollment to be recognized as..... to represent others before the Treasury Department has been examined, and after consideration it is recommended that the application be .....

..... *Chairman.*
.....
.....
.....
.....
.....
.....

Committee on Enrollment and Disbarment,
Treasury Department.

Approved by the Secretary.
(See Schedule No. .....)

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[2] NOTE.—This oath may be taken before any justice of the peace, notary public, or other person who is legally authorized to administer an oath in the State, Territory, or District where the application is executed. The seal of the officer administering the oath must be affixed, or if he has no seal, his official character must be duly certified under seal.

[3] Leave certificates blank if a member of the bar.

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(T. D. 39088.)

Perfumes containing distilled spirits.

Stamping with customs stamps cartons of perfumes containing distilled spirits provided for in T. D. 37391 of November 1, 1917, amended.

TREASURY DEPARTMENT, *April 27, 1922.*

To Collectors of Customs and Others Concerned:

It has been brought to the attention of the department that the provision of the regulations published in T. D. 37391 of November 1, 1917, which requires that the cartons or other covers containing alcoholic perfumery shall be stamped with customs stamps, serves no useful purpose and is not necessary for the protection of the revenue.

The paragraphs of the said regulations headed "Perfumes containing distilled spirits" are therefore amended to read as follows:

The internal-revenue tax imposed on imported perfumes by section 600 (c) of the act approved February 24, 1919, will be collected by collectors of customs and deposited with the Treasurer of the United States as internal revenue, and so reported in their accounts.

(103103.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39089.)

Antidumping act—Revocation of finding by the Secretary of the Treasury.

T. D. 39036 of March 13, 1922, in which was published a finding of dumping in the case of tissue paper from England, revoked—Proceedings pending before customs officers based on that decision to be discontinued.

TREASURY DEPARTMENT, *April 27, 1922.*

To Collectors of Customs and Others Concerned:

Further developments satisfy the department that the industry of making tissue paper in the United States is not being, and is not likely to be, injured by reason of the importation into the United States of tissue paper from England.

T. D. 39036 of March 13, 1922, in which was published a finding under section 201 (*a*) of the antidumping act of 1921, in the case of such tissue paper, is therefore hereby revoked and all proceedings pending before customs officers based upon the said decision will be discontinued.

(106085.) ELMER DOVER, *Assistant Secretary.*

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(T. D. 39090.)

Drawback.

Synopsis of drawback decisions issued between March 27 and April 29, 1922, inclusive.

(A) *Flour.*—Manufactured by the Hecker-Jones-Jewell Milling Co., of New York, N. Y., wholly or in part with the use of imported wheat.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer dated March 18, 1922, showing, in the case of each lot of flour manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof; the quantity, identity, and value of the imported wheat used; the quantity of domestic wheat, or flour produced from domestic wheat, used, if any; the quantity of each kind of flour obtained and the quantity of waste incurred, together with its value, if any. A sworn abstract from such manufacturing record shall be filed with the drawback entry or certificate of manufacture. In the liquidation of such abstracts the drawback shall be distributed to the several grades of flour and by-products, which shall include screenings, bran, middlings, red dog flour, and similar products, according to their relative values at the time of separation, subject to the limitations of the drawback law, as interpreted by the department in T. D. 33809 of October 25, 1913.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported wheat used in the manufacture of the exported flour, as shown by the abstract from the manufacturing record, less the quantity of imported material which the value, if any, of the waste will replace.

Rate effective on and after December 5, 1921.

Sworn statement dated March 18, 1922, transmitted to the collector of customs at New York, N. Y., on April 22, 1922. (100284–12.) (Signed) ELMER DOVER, *Assistant Secretary.*

(B) *Hosiery.*—Manufactured by the Lynchburg Hosiery Mills, of Lynchburg, Va., with the use of imported artificial silk yarn, for the account of the Hosiery Manufacturers Corporation, of New York, N. Y., or for the account of others.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer dated April 4, 1922, and at the end of each period of manufacture, which shall not exceed one month, there shall be filed a certificate of manufacture and abstract from manufacturing records showing, for the period, the quantity, identity and value of each lot of imported artificial silk yarn used, the quantity of each kind, size and style of hosiery manufactured therefrom, the quantity of each kind, size and style of

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defective hosiery obtained, and the quantity of waste resulting, together with its value, if any.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported artificial silk yarn used in the manufacture of the exported hosiery, as shown by the abstract from the manufacturing record, less the quantity of imported material which the value, if any, of the waste will replace.

Rate effective on and after December 11, 1921.

Sworn statement dated April 4, 1922, transmitted to the collector of customs at New York, N. Y., on April 26, 1922. (95187-28.) (Signed) ELMER DOVER, *Assistant Secretary*.

(C) *Hosiery*.—Manufactured by the Reading Knitting Mills and the Glasser Hosiery Co. (Inc.), of Reading, Pa., the Bangor Silk Knitting Mills, of Bangor, Pa., and the West Branch Knitting Co., of Milton and Shamokin, Pa., with the use of imported yarn, for the account of the Hosiery Manufacturers Corporation, of New York, N. Y., or for the account of others.

A manufacturing record shall be kept at each of the factories in the manner described in the sworn statements of the manufacturers dated January 21 and 28, March 22, and April 12, 1922, respectively, showing, in the case of each lot of hosiery manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof; the quantity, value, and identity of each kind of imported yarn used; the quantity of each kind, size, and style of hosiery obtained; the quantity of each kind, size, and style of defective hosiery resulting; and the quantity of each kind of waste incurred, together with the value thereof, if any. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported yarn used in the manufacture of the exported hosiery, as shown by the abstract from the manufacturing record, less the quantity of imported material which the value, if any, of the waste will replace.

These regulations shall be effective as to hosiery exported by the Reading Knitting Mills on or after August 3, 1921, by the Bangor Silk Knitting Mills on or after September 21, 1921, by the Glasser Hosiery Co. (Inc.), on or after November 13, 1921, and by the West Branch Knitting Co. on or after March 17, 1922.

Supplemental sworn statements may be filed covering additional factories manufacturing hosiery for exportation with benefit of drawback with the use of imported yarn, and upon verification of such statements and approval by the department, drawback may be allowed on hosiery manufactured at such factories.

Supplemental sworn schedules may be filed covering additional kinds, styles, and sizes of hosiery, and upon verification of such sched-

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ules drawback may be allowed on hosiery manufactured in accordance therewith.

T. D. 35609 of July 28, 1915, revoked.

Sworn statements referred to above transmitted to the collector of customs at New York, N. Y., on April 26, 1922. (95187–28.) (Signed) ELMER DOVER, *Assistant Secretary.*

(D) *Lamps, electric.*—T. D. 38029 (D) of May 21, 1919, as extended by T. D. 38514 (D) of October 1, 1920, providing for the payment of drawback on electric lamps manufactured by the International General Electric Co., of Harrison, N. J., with the use of imported lamp bases and bulbs, further extended to provide for the manufacture of such articles at its factory at Providence, R. I.

Extension effective on and after December 16, 1921.

Sworn statement, dated March 22, 1922, transmitted to the collector of customs at New York, N. Y., on April 26, 1922. (72091.) (Signed) ELMER DOVER, *Assistant Secretary.*

(E) *Marble slabs.*—Manufactured by the Gray Knox Marble Co., of Knoxville, Tenn., from imported marble blocks.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer dated February 21, 1922, showing, in the case of each lot of marble slabs manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof; the number, dimensions, and identity of the imported marble blocks used; the number and dimensions of the marble slabs obtained; and the number and width of saw cuts made. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported marble appearing in the exported slabs, with an addition to compensate for waste incurred in sawing, as shown by the abstract from the manufacturing record, with a maximum allowance for waste of seven thirty-seconds inch for each saw cut made.

Rate effective on and after March 2, 1921.

Sworn statement dated February 21, 1922, transmitted to the collector of customs at Tampa, Fla., on March 29, 1922. (104131–4.) (Signed) ELMER DOVER, *Assistant Secretary.*

(F) *Medicinal preparation; "Manola."*—Manufactured by the Luyties Pharmacal Co. or the Manola Co., of St. Louis, Mo., with the use of domestic taxpaid alcohol.

Manufacturing records shall be kept in the manner described in the sworn statements of the Manola Co., dated January 11 and February 16, 1922, and of the Luyties Pharmacal Co., dated March 27, 1922, showing, in the case of each lot of manola manufactured for

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exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of the domestic taxpaid alcohol used, the quantity of manola obtained, and the number and size of containers in which packed. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the tax paid on the quantity of alcohol used in the manufacture of the exported manola, as shown by the abstract from the manufacturing record.

Rate effective on and after October 20, 1921.

Sworn statements referred to above transmitted to the collector of customs at St. Louis, Mo., on April 26, 1922. (101560–30.) (Signed) ELMER DOVER, *Assistant Secretary.*

(G) *Medicinal preparations.*—T. D. 35636 of August 6, 1915, providing for the payment of drawback on medicinal preparations manufactured by the Palisade Manufacturing Co., of Yonkers, N. Y., with the use of domestic taxpaid alcohol, amended to provide for the filing of supplemental sworn schedules covering the manufacture of additional kinds of medicinal preparations, changes in formulas or sizes of containers, or the use of imported materials.

Upon verification of such supplemental schedules drawback may be allowed on medicinal preparations manufactured in accordance therewith.

Amendment effective on and after September 28, 1921.

Supplemental sworn statement, dated March 13, 1922, covering the manufacture of Kola-Cardinette, transmitted to the collector of customs at New York, N. Y., on April 5, 1922. (71474.) (Signed) ELMER DOVER, *Assistant Secretary.*

(H) *Paper, carbon, and typewriter ribbons.*—Manufactured by the Carrib Manufacturing Corporation, of Rochester, N. Y., with the use of imported tissue paper.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer, dated February 18, 1922, showing, in the case of each lot of carbon paper manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the identity of the imported tissue paper used, the quantity of carbon paper obtained, and the quantity of imported tissue paper appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported tissue paper appearing in the exported carbon paper, as shown by the abstract from the manufacturing record.

Drawback may also be allowed, under the provisions of T. D. 37377 (G) of February 20, 1917, on typewriter ribbons manufactured

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by the said firm from typewriter ribbon cloth produced by the Sherman & Sons Co., of New York, N. Y., from imported cotton cloth.

Rate effective on and after October 26, 1921.

Sworn statement, dated February 18, 1922, transmitted to the collector of customs at New York, N. Y., on March 29, 1922. (101733-5.) (Signed) ELMER DOVER, *Assistant Secretary.*

(I) *Wall board.*—Manufactured by the Plastergon Wall Board Co., of Buffalo, N. Y., with the use of imported wood-pulp board.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer dated January 5, 1922, showing, in the case of each lot of wall board manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the identity of the imported wood-pulp board used, the quantity of finished wall board obtained, and the quantity of imported wood-pulp board appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported wood-pulp board appearing in the exported wall board, as shown by the abstract from the manufacturing record.

Rate effective on and after October 19, 1921.

Sworn statement dated January 5, 1922, transmitted to the collector of customs at New York, N. Y., on March 29, 1922. (109779.) (Signed) ELMER DOVER, *Assistant Secretary.*

(J) *Wool cleaned, scoured, graded, and (or) carded.*—Produced by E. S. Parkhurst & Co., of Gloversville, N. Y., by one or more of the following processes: Cleaning, scouring, grading, and carding from wool pulled from imported skins by firms operating under drawback rates now existing or hereafter promulgated or from wool imported in the grease or scoured.

A record shall be kept in the manner described in the sworn statement of the producer, dated February 28, 1922, showing, in the case of each lot of cleaned, graded, scoured, and (or) carded wool produced for exportation with benefit of drawback, the lot number and date of production thereof; the quantity, identity, and value of the imported wool used; the quantity and value of each grade of finished wool obtained; and the quantity of waste resulting, together with its value, if any. A sworn abstract from such record shall be filed with the drawback entry or certificate of manufacture.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of imported wool used in the production of the exported wool, as shown by the abstract from the record provided for above, such quantity to be reduced according to the

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quantity of imported material which the value of the waste will replace. The drawback shall be distributed to the several grades of wool obtained according to their relative values at the time of separation.

Rate effective on and after September 15, 1921.

T. D. 28133, T. D. 30405, and T. D. 30540 of May 3, 1907, March 7, 1910, and April 18, 1910, revoked.

Sworn statement dated February 28, 1922, transmitted to the collector of customs at New York, N. Y., on April 20, 1922. (44613.)

(Signed) ELMER DOVER, *Assistant Secretary.*

(T. D. 39091—G. A. 8521.)

Gauge of liquor under act of October 3, 1917.

1. Protests claiming assessment should have been based on actual content of casks at time of withdrawal, sustained as to all casks and hogsheads gauged on withdrawal, no other gauge having been made at, near, or subsequent to date of tax act.

2. As to casks and hogsheads not regauged at any time after entry for warehouse, the content gauge at the time of entry and not the capacity gauge, proper basis for assessment.

3. Protests drawn with reference to alleged existing facts and acts of the collector properly sustained on proof of those facts.

United States General Appraisers, New York, April 24, 1922.

In the matter of protests 940814, etc., of Park & Tilford against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Amerman & Patterson (*Maurice W. Clarke* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Marcus Higginbotham, jr.*, special attorney), for the United States.

Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers; HAY, G. A., dissenting).

ADAMSON, General Appraiser: In this suit against the United States, the importer protests the internal revenue tax imposed upon certain liquors. The specific allegation in protest 940814 is—

Collector erred in assessing tax or duty at $2.10 per gallon as revenue tax under act of October 3, 1917, on amount found by gauger at time of entry. Claim is made that the tax should have been assessed on the amount of liquor contained in casks and hogsheads at time of withdrawal from bond, making allowance for leakage or evaporation occurring between time of entry and withdrawal.

Protest 940815 is identical and contains the additional language at the end of the protest:

"or under the same rules for allowance as domestic spirits now enjoy for wastage."

In his statements referring the protests to this board, the collector states in each case:

From the U. S. Gauger's answer (herewith) to the protest, it appears further tests were made on a few specified withdrawals.

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It will be observed that the collector does not specify the particular casks or hogheads that were specially regauged nor those omitted from the regauge on withdrawal, nor have we deemed it necessary from an examination of the papers to determine and classify them. The collector can do that on reliquidation.

It has been held by the Court of Customs Appeals (The Bacardi Corporation *v.* United States, suit 2139, T. D. 39078) that it is the duty of the collector to regauge the liquors immediately upon the change made in the law, which, in this case, was October 3, 1917, and the court, in the course of discussing the case, states—

> If there had been no regauge, it is possible that we would have been bound to accept the original gauge.

While that may be regarded as obiter dicta, in the absence of any definite decision, we are justified in accepting it as some indication of the bent of the judicial mind.

The Government made no criticism or objection to the protests, but they appear to us to be a little peculiar, both in form and substance.

They begin by alleging that the collector erred in assessing the $2.10 revenue tax on the amount found by the gauger at the time of entry, which we construe and the collector construes as meaning the gauge capacity. There is no doubt that the protests are good that far and should not be overruled on that statement, if coupled with an adequate claim as to what should have been done.

Then follows the claim that the tax should have been assessed on the amount of liquor contained at the time of withdrawal from bond.

Of course that is not good law as an abstract proposition, considered in contradistinction to what is the real law—that the contents should have been gauged at the date of the act imposing the tax—but when we consider the situation at the time the protests were filed, the apparent difficulty disappears. The record at that time was made up. All that has ever happened had then happened, except the mere report by the collector to this board. The facts were not changed.

The situation dealt with by the importer in filing the protests was this: There was no gauge at the time the act was passed; there was no gauge between the time of entry into the warehouse and the time of withdrawal; there were two gauges made at the time of entry, one the capacity gauge and the other the content gauge; there was a content gauge also made at the time of withdrawal as to part of the merchandise; therefore, the protests were drawn in exact accordance with the facts as they existed at the time.

The importer said it was wrong for the collector to tax the capacity contents at the time of entry. He might with equal truth have said, if in fact the language can not be construed that way anyhow, that

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it would have been wrong to take the content gauge at the time of entry, if any subsequent one was made, which had been made on part of the merchandise in the case.

And then his claim was made in exact accordance with the facts, that the only other gauge made of contents was at the time of withdrawal. He had a right to claim that that was correct as against the action of the collector, and, following the court in its reasoning in Bacardi *v.* United States (supra), according to the law, the content gauge should have been taken at the time of the enactment of the present law. If no gauge was taken at that time and one was taken at any time afterwards, in deciding between the two, the Government can not take advantage of the collector's failure of duty. Therefore the only one made after the date of the act must be accepted as to all the merchandise to which it applies, and we sustain the claim in the protests that that gauge made at the time of withdrawal ought to have been accepted, because it was the only one made at or after the time of the enactment of the statute.

As to the casks and hogsheads not gauged after the enactment of the law and not gauged at any time after entry into warehouse, there appears to be no statement in the protest or record as to what the contents were, either at the time of the enactment of the act or at the time of withdrawal. The only light that we can find on the subject is the content gauge at the time of entry. In the absence of any other information on the subject, the board holds that the content gauge as to those casks at the time of entry should be accepted by the collector and the protests are sustained to that extent. The collector of customs will reliquidate accordingly.

DISSENTING OPINION.

HAY, General Appraiser: I dissent from the decision of the board in this case. There is in my judgment a fatal variance between the protest, which stands in the nature of a declaration or complaint, and the evidence upon which the case is submitted for decision. Nor am I able to see how the collector can reliquidate the entries under the finding of the board without exercising some judicial function with which he is not vested.

(T. D. 39092—G. A. 8522.)

Strung seeds—Nonenumerated manufactured articles.

Fancifully colored and shaped imported seeds strung on thread, sometimes used in their imported condition as necklaces and girdles, but usually taken apart and made into various fancy articles and ornaments, also sewn on dresses, are not dutiable by virtue of the similitude clause as beaded articles under paragraph 333, but as nonenumerated manufactured articles under paragraph 385, for the reason their use as

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necklaces is not a substantial use, but merely exceptional; and seeds are not similar in material, quality, or texture to "beads *made* of glass or paste, gelatin, metal, or other material." (Citing and following Vantine's case, G. A. 6332, 11 Treas. Dec. 501; Strauss & Co.'s case, G. A. 7047, 19 Treas. Dec. 685; Strauss *v.* United States, 2 Ct. Cust. Appls. 203, T. D. 31946; United States *v.* Buss, 3 Ct. Cust. Appls. 87, T. D. 32357; Anderson's case, Abstract 43216, 36 Treas. Dec. 693; Cone *v.* United States, 6 Ct. Cust. Appls. 263, T. D. 35477; S. H. Kress & Co.'s cases, Abstracts 44427 and 44570, 40 Treas. Dec. 436 and 460; and A. A. Vantine & Co.'s case, Abstract 37237, 28 Treas. Dec. 116.)

United States General Appraisers, New York, April 25, 1922.

In the matter of protest 941187 of S. H. Kress & Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Comstock & Washburn (*Henry J. Rode* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Harry M. Farrell*, special attorney), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Sullivan, General Appraiser: The merchandise is described on the invoices as "stringed seed work," red, red and white, red and black, red and brown. Two samples were received in evidence. Exhibit 1 consists of red and black oval seeds and Job's tears seeds strung on a string with the ends knotted together, several groups of red and black seeds to the number of about eight in a group being separated at intervals by a single Job's tear seed. Exhibit 2 consists of several groups of small brown seeds, about the size of an apple pip, each group being separated from the other by a single red and black seed, strung on a black cotton string. Each string is a little over 4 feet long.

This merchandise was assessed with duty as articles in chief value of beads at 50 per cent ad valorem under paragraph 333. The protest claims it dutiable at 15 per cent ad valorem under paragraph 385 as a nonenumerated manufactured article.

It was testified the other articles on the invoice did not differ from the samples except in color, size, or length of the chain, and are made of wili-wili seeds. They are strung with needle and thread with so-called horsehair, and then tied at the end. They are all without catches, snaps, or clasps. It was testified they are sold to people who use them for making ornaments, sewing on dresses, and manufacturing various articles, such as small receptacles for carrying small objects like a child's purse, which was introduced in evidence and marked "Ex. A." The witness for the importers further testified these strings of wili-wili seeds are sometimes used in the condition as imported, being worn around the neck, and sometimes as a girdle. He further testified he had read the decision of the board known as G. A. 6332 (T. D. 27257), and the description of the merchandise covered by that decision would exactly fit this merchandise under consideration.

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The examiner who passed the merchandise in question stated he returned it as beaded articles in pursuance of instructions of the Treasury Department in T. D. 36656; that he was familiar with the decision known as T. D. 27257, G. A. 6332, and has never returned merchandise under that decision. He testified Ill. Ex. A differed from the merchandise in G. A. 6332 only in construction; the material is the same, except, in this instance, the necklace has what is known as Job's tears. He testified Exhibit 1 was composed of the wili-wili bead and the Job's tears seed, the white being the Job's tears and the colored the wili-wili; that Exhibit 2 was composed entirely of wili-wili beads. On cross-examination he testified he did not know whether they were wili-wili beads or seeds. He testified he was familiar in a way with how bead necklaces are strung; that they are on continuous strings; that he has some bead necklaces without clasps.

Q. Now how do Exhibits 1 and 2 appear as compared with the bead necklaces that you have in mind when you refer to those that do not have any clasp?—A. These compare with what we know as compared with a permanently strung article.

He testified the real name of these articles is "wili-wili seed beads;" that the material of them is seeds.

Mr. Goldberg, a dealer in beads and fancy goods, testifying on behalf of the Government, stated he would not term a complete string of beads a necklace. He said: "There are strings of beads that can be used as necklaces, but other strings of beads is not termed a necklace."

Q. Do you have some bead necklaces that do not have any metal clasps?—A. That can be used as such.

Q. In your experience has that been a fact?—A. It has.

Q. Looking at Exhibits 1 and 2, I understand you have never handled any articles like that.—A. Not from the West Indies, no.

Q. Now, referring to bead necklaces that you had in mind a moment ago, from the appearance of Exhibits 1 and 2, are they in the same form, so far as making up is concerned?—A. The same form.

The importer's witness being recalled, testified that from his trade experience these seeds are strung with a needle and thread "all in one operation indiscriminately, the way that they pick them out." Although the witness did not so state, the inference to be drawn from his testimony is that these seeds are not perforated in advance of stringing, but are pierced with the needle and thread and strung in one operation, thus differentiating these seeds from beads, which are pierced previously to being strung. If this is correct, previous to the stringing these seeds can not be beads, for the reason they are not perforated, which is a requisite of every bead.

It has been testified in this case on behalf of the importer, the description of the merchandise covered by the decision of the board known as G. A. 6332, T. D. 27257 (A. A. Vantine & Co.'s case, 11

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Treas. Dec. 501), would exactly fit the merchandise under consideration. Further, the United States examiner who passed this merchandise testified that the child's purse (Ill. Ex. A), in evidence in this case, composed of the seeds included in Exhibits 1 and 2 herein, differed from the merchandise in G. A. 6332 "only in construction;" that the material is the same, with the exception of the Job's tears seeds.

The board said in G. A. 6332, supra:

> Natural seeds are not similar in material, quality, or texture to beads manufactured from glass or other materials, nor do we think, considering the diversified uses to which beads are applied, that the exceptional employment of seeds in the construction of fancy articles, we would be warranted in holding that the intended purpose of use of beads and natural seeds is similar. Probably among the many different uses to which beads and seeds are respectively put, the present case furnishes the only example of similarity of use; nor do the completed articles in question assimilate more closely with regard to use watch pockets made of beads than they do like articles composed of celluloid, metal, worsted, silk, and other materials.

That decision was rendered in 1906 under the tariff act of 1897, and the board held the articles composed of seeds in question dutiable as nonenumerated manufactured articles rather than as beaded articles by virtue of the similitude paragraph, or as seeds. That decision has not been reversed or modified.

As Judge Sharretts stated in the portion of his opinion above quoted, "natural seeds are not similar in material, quality, or texture to beads manufactured from glass or other materials." The similitude paragraph provides a fourth particular, viz, use. Is the exceptional use of these articles as necklaces sufficient to bring them within the provision for beaded articles by virtue of the similitude clause?

In Adolph Strauss & Co.'s case, G. A. 7047 (T. D. 30725; 19 Treas. Dec. 685), the board held combs composed of galalith dutiable by the application of the similitude clause as combs, composed wholly of horn, or composed of horn and metal. The board said:

> That is, wherever an imported article is not specifically made dutiable, it is the duty of the classifying officer, and of this board upon appeal to it, to ascertain whether or not it is similar, either in material, quality, texture, or the use to which it may be applied to any other article that is *enumerated* in the tariff law, before classifying it as a nonenumerated manufactured or unmanufactured article. The galalith combs in the case at bar are, from the testimony in this case, similar to if not identical in *use* with the horn combs *enumerated* in paragraph 463 [act of 1909]. (The matter in italics and brackets is ours.)

This holding was affirmed by the Court of Customs Appeals in Strauss *v.* United States (2 Ct. Cust. Appls. 203; T. D. 31946).

The court said in the Strauss case, supra:

> This provision (similitude clause) specifically requires that imported articles *which are not enumerated* shall bear the same duty as articles which *are enumerated*, provided the former be similar to the latter either in material, quality, texture, or *use*.

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The board has many times held galalith bracelets without metal dutiable as nonenumerated manufactured articles. (Bullocks's case, Abstract 43958, 38 Treas. Dec. 925; M. J. Corbett & Co.'s case, Abstract 44071, 39 Treas. Dec. 478, etc.). It will be observed that bracelets are not enumerated in the tariff act.

Subsequently to the Strauss case in United States *v.* Buss (3 Ct. Cust. Appls. 87; T. D. 32357), the court enlarged on its holding in the Strauss case, and said (p. 90):

> It appears to be settled that an article not named eo nomine may, if within a class designated generally, be compared with an importation to determine the question of similitude between the two.

In that case hats composed of natural horsehair were held by the court dutiable by similitude as *articles* composed of artificial or imitation horsehair under paragraph 405 of the act of 1909, rather than by similitude to straw hats under paragraph 422 of the same act. The court said (p. 89):

> Comparing natural horsehair with natural straw made into the form of braids and hats, it would seem altogether clear that there is not as close an assimilation as there is between natural horsehair and artificial horsehair.
>
> It is contended by the importer that, straw hats having been named eo nomine, similitude to straw hats is more definite than is the similitude to artificial horsehair articles, and the contention, as we understand it, is that in determining the application of the similitude clause it should first be ascertained whether the importation bears a similitude to an article named eo nomine in the tariff act, and that if such an article be found, one which answers the call of similitude in material, quality, or use, the inquiry ends and no inquiry will be made as to whether an article falling within a general designation provided in another paragraph will bear a closer similitude in quality or texture. On the other hand, the Government contends that the similitude clause applies to the article which it most resembles, whether such article to which the resemblance is claimed is enumerated eo nomine or comes under a general classification.

The court sustained the Government's contention, as before indicated.

In L. D. Anderson Jewelry Co.'s case (Abstract 43216, 36 Treas. Dec. 693) the board held tiny delicately colored sea shells of a conical shape strung on a strong thread about 6 feet in length, the ends of which are fastened together without a clasp, dutiable as manufactures of shell rather than as jewelry.

Of course, under the tariff act of 1913 manufactures of shell are specifically provided for, but had they not been provided for, it seems to us such strings of shell, strung similarly to these strings of seeds, could not have been considered beaded articles any more than the strung seeds covered by the case at bar.

Necklaces of beads may be dutiable under either of two provisions of the tariff act, viz, either as jewelry or as beaded articles; for that reason it seems to us the rule laid down in the Strauss case, that the similitude clause may apply to an article resembling the article under consideration, whether such article to which resemblance is

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claimed is enumerated eo nomine or comes under a general classification, should not apply to articles resembling necklaces of beads, for the reason that necklaces of beads may not always fall under a general classification as beaded articles, but sometimes also under the general classification of jewelry.

Again, the strung seeds in question are not always used in their imported condition as necklaces, but only occasionally, the seeds commonly being taken off the strings and used for making ornaments, sewing on dresses, and manufacturing various articles, such as the small purse marked "Ill. Ex. A;" also sometimes in their imported condition as a girdle. We do not believe their occasional use as necklaces, and by that use their similarity to bead necklaces, should render them classifiable as beaded articles for the reason that similarity in any respect must be substantial.—Cone *v.* United States (6 Ct. Cust. Appls. 263, at p. 267).

Therefore, following the holding in the Vantine case, G. A. 6332, supra, we hold the merchandise in question dutiable at 15 per cent ad valorem under paragraph 385 as a nonenumerated manufactured article. (See also S. H. Kress & Co.'s cases, Abstracts 44427 and 44570, 40 Treas. Dec. 436 and 460, and A. A. Vantine & Co.'s case, Abstract 37237, 28 Treas. Dec. 116.)

The protest is sustained.

(T. D. 39093—G. A. 8523.)

Imitation amber composed of synthetic phenolic resin—Annual reduction of 20 per cent of special duty of 5 cents per pound, beginning 5 years after passage of act of September 8, 1916.

Certain imitation amber composed of synthetic phenolic resin, imported under the provisions of section 500 (Group III) and section 501, Title V, of the act of September 8, 1916, which provide a duty thereon of 30 per cent ad valorem and a special duty of 5 cents per pound, having been withdrawn from warehouse on various dates from and including September 30, 1921, to and including December 7, 1921, is entitled on such withdrawals to a reduction of 20 per cent on such special duty of 5 cents per pound, and is thereby dutiable at 30 per cent ad valorem and 4 cents per pound.

United States General Appraisers, New York, April 25, 1922.

In the matter of protest 942107 of National Importing Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Walden & Webster (*E. F. Jordan* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence*, special attorney), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Sullivan, General Appraiser: The merchandise in question consists of imitation amber composed of synthetic phenolic resin, a coal-

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tar product. It was returned for duty as shown by the answer to the protest at 30 per cent ad valorem and 5 cents per pound under sections 500 (Group III) and 501, Title V, of the act of September 8, "1919." Evidently an error was made in the answer to the protest, as the act under consideration is of date September 8, 1916.

It is contended in the protest—

> under the Tariff Act of October 3rd, 1913, * * * that said merchandise is dutiable at 15 per cent ad valorem under paragraph 5 or 385, or at 15% and 2½ cents per pound under sections 500 and 501, Act of September 8, 1916; also if said merchandise be dutiable under said act of 1916, it is entitled to 20 per cent reduction of the rate imposed, in accordance with section 501 thereof, being withdrawn from warehouse more than five years after the enactment of said act.

The merchandise in question is covered by entry number B 9604.

At the trial of the cause there was received in evidence a letter from the collector at New York, dated December 30, 1921, and on that letter the cause was submitted. We are not further advised by the Government or the importer as to the construction of the statute involved.

The letter of the collector is as follows:

DECEMBER 30, 1921.

PRESIDENT, BOARD OF U. S. GENERAL APPRAISERS,
New York, N. Y.

SIR: In reply to your letter of the 27th instant (DPD) I submit the following schedule covering packages withdrawn from warehouse on bond entry 9604, and protest 942107/10115, of the National Importing Company.

Date of withdrawal.			*Duty paid.*
Oct. 14, 1920	2 c/s	901/2	$140.25
Nov. 22, "	1 "	903	70.20
Jan. 14, 1921	1 "	904	70.20
Mar. 18, "	1 "	905	70.20
May 5, "	1 "	906	70.20
Sept. 30, "	1 "	907	159.10
Oct. 5, "	1 "	908	152.80
Oct. 20, 1920	1 "	909	641.20
Oct. 27, 1921	1 "	910	152.80
Nov. 9, 1921	1 "	912	152.50
Nov. 12, 1921	1 "	911	152.50
Nov. 12, 1921	1 "	913	152.80
Nov. 21, 1921	1 "	914	152.80
Dec. 7, 1921	1 "	915	152.80

The entry and invoice are forwarded herewith,

Respectfully,

H. C. STUART,
Special Deputy Collector.

Enclosures.

Evidently the merchandise does not fall, as claimed in the protest, under paragraph 5 or 385 of the act of 1913. Paragraph 5 relates to "Alkalines, alkaloids, and all chemical and medicinal compounds, preparations, mixtures and salts, and combinations thereof not specially provided for in this section." This merchandise is not

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dutiable under that paragraph. It does not fall within paragraph 385, under the clause providing for unenumerated manufactured articles, as this merchandise is dutiable under the act of 1916.

It does not fall within Groups I and II, section 500, of the act of September 8, 1916.

As the merchandise is described as synthetic phenolic resin it falls within Group III, section 500, and is dutiable thereunder. Group III provides, among other things:

GROUP III. All colors, dyes, or stains, whether soluble or not in water, color acids, color bases, color lakes, photographic chemicals, medicinals, flavors, *synthetic phenolic resin*, or explosives, not otherwise specially provided for in this title, when obtained, derived, or manufactured in whole or in part from any of the products provided for in Groups I and II [coal-tar products] * * * thirty per centum ad valorem. (The italics and matter in brackets are ours.)

It is also subject to a special duty under section 501 of the act of 1916, which provides, among other things—

SEC. 501. * * * and upon all articles contained in Group III (except natural and synthetic alizarin, and dyes obtained from alizarin, anthracene, and carbazol natural and synthetic indigo and all indigoids, whether or not obtained from indigo and medicinals and flavors) *a special duty of 5 cents per pound.*

The protestant insists in the protest that this merchandise "is entitled to 20 per cent reduction of the rate imposed, in accordance with section 501 thereof, being withdrawn from warehouse more than five years after the enactment of said act."

This provision is as follows:

During the period of five years beginning five years after the passage of this Act such special duties shall be annually reduced by twenty per centum of the rate imposed by this section, so that at the end of such period *such special duties* shall no longer be assessed, levied, or collected: * * *.

The intent of this provision is very evident.

The special duty of 5 cents per pound attached to this merchandise by the previous provision of paragraph 501 five years after the passage of the act is to be reduced 20 per cent annually. This provision to reduce the special duty has not any reference to the 30 per cent ad valorem levied on Group III of section 500, but merely applies to the special duty of 5 cents per pound imposed in the first part of section 501.

As to whether or not the annual reduction of 20 per cent on the special duty would begin on September 8, 1921, is not before us, as the letter of the collector shows the first withdrawal of this merchandise from warehouse which would fall within the provisions of the second clause of section 501 was on September 30, 1921.

We therefore find from the facts in this case, limited as they are, that the protestant is entitled to a 20 per cent reduction of the special duty of 5 cents per pound for all withdrawals of this merchandise

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from warehouse from and including September 30, 1921, thereby reducing the special duty on such withdrawals as are enumerated in the letter of the collector, dated December 30, 1921, to 4 cents a pound, from and including September 30, 1921.

The protest is sustained.

(T. D. 39094—G. A. 8524.)

Alcoholic compound—Soap.

A liquid soap or detergent consisting of a solution of sodium soap in 7 per cent of alcohol, the whole dissolved in carbon tetrachloride, *held* on the facts developed by this record to be properly classified as soap under paragraph 66, act of 1913, at 5 per cent ad valorem as claimed by protestants, rather than as an alcoholic chemical preparation under paragraph 16 of said act.

United States General Appraisers, New York, April 25, 1922.

In the matter of protests 940128, etc., of John A. Steer & Co. et al. against the assessment of duty by the collectors of customs at the ports of Philadelphia and New York.

[Reversed.]

Strauss & Hedges (*Jacob L. Klingaman* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Harry M. Farrell*, special attorney), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Brown, General Appraiser: This suit was brought to test the classification of what might be called a liquid soap or cleaner and to ask refund of duty caused by its classification as an alcoholic preparation.

The merchandise was classified for duty by the collectors of New York and Philadelphia as an alcoholic chemical preparation at 10 cents per pound and 20 per cent ad valorem under paragraph 16, act of 1913. The principal claim is that it is dutiable as soap under the last clause of paragraph 66 of said act, reading as follows:

all other soaps and soap powder not specially provided for in this section, 5 per cent ad valorem.

It is shown to consist chemically of a solution of sodium soap in 7 per cent of alcohol, the whole dissolved in tetrachlormethane, which it seems is another name for carbon tetrachloride.

According to Norris's Organic Chemistry, carbon tetrachloride is an excellent solvent used with other things for cleaning purposes and not inflammable. (See Principles of Organic Chemistry, by James F. Norris, 1912, p. 242.) The testimony shows that it is used by dyers and bleachers for dyeing and as a detergent scouring liquid. It seems to belong to the same class as the tetrapol described by Judge McClelland in the case of Farbenfabriken of Elbefeld Co., G. A. 6902 (T. D. 29724; 17 Treas. Dec. 366) and of the Tetrapol benzine

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soap described by Judge Barber in United States *v.* Farbenfabriken of Elbefeld Co. (3 Ct. Cust. Appls. 358; 23 Treas. Dec. 331).

As Judge Barber held in the latter case, the presence of alcohol does not take the soap out of the soap paragraph and put it into the paragraph covering alcoholic preparations. It was also held in effect in that case that articles of this general character, liquids used as cleaners of the soap character, were still soaps though liquid. Therefore, following the general trend of these decisions we hold on the facts developed by this record (to which state of facts this ruling is limited) that the article in question is a soap and properly classifiable under paragraph 66 at 5 per cent ad valorem.

Judgment order will issue accordingly.

(T. D. 39095—G. A. 8525.)

Fruit prepared—Pineapples in brine.

1. Pineapples which have been peeled, cut into pieces, and treated with sulphur fumes, the latter operation for the purpose of bleaching and causing the pieces to retain their original shape, are properly dutiable under paragraph 217, act of 1913, as edible fruits prepared in any manner notwithstanding they were imported in brine.

2. Fruit, though imported in brine, if otherwise prepared to a certain end, can not be held to be fruit in brine and free, but should be classified as edible fruits prepared.

United States General Appraisers, New York, April 25, 1922.

In the matter of protests 938525, etc., of Amerman & Patterson against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Hatch & Clute (*Maurice W. Clarke* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*John J. Mulvaney* and *John G. Lerch*, special attorneys), for the United States.

Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers).

WAITE, General Appraiser: The commodity in question here is invoiced as pineapples in brine. There appear to have been some 1,157 barrels. They were returned for duty and duty was assessed thereon as edible fruits prepared, at 1 cent per pound under paragraph 217 of the law of 1913. The importations were made from Cuba. The importer claims free entry under paragraph 488 of the same law which reads as follows:

Fruits or berries, green, ripe, or dried, and fruits in brine, not specially provided for in this section.

Paragraph 217, under which assessment was made, so far as pertinent, is as follows:

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all edible fruits, including berries, when dried, desiccated, evaporated, or prepared in any manner, not specially provided for in this section, 1 cent per pound.

A sample of the commodity was produced and appears to consist of rectangular pieces of pineapple from one-half to three-quarters of an inch in thickness and about an inch wide, the average length being about 4 inches. The purpose for which the commodity was imported is said to be the making of glacé pineapple. When imported it is in brine.

The testimony shows that the treatment of the commodity before importation and when it is being prepared for importation is practically as follows: The pineapple is first peeled, then cut up and subjected for about 15 minutes to sulphur fumes, immersed in two solutions of brine, and packed in barrels, then covered with brine, and in that condition is shipped to this country.

The record discloses the fact that the liquid in which it is shipped contains approximately 4 per cent of salt. This, under the decisions of the court and the board, is sufficient to constitute a brine.

While it is shown that one of the purposes for which the sulphur is used in connection with the preparation of this fruit is to bleach it, a witness for the importer also gives the following testimony on page 6:

Q. What do you bleach it for?—A. To keep the fruit whole so as not to make a pulp, and to make it white.

And on page 11:

Q. We are speaking of the purpose of the bleaching before it comes to the glacé period.—A. Well, if I can explain, for making glacé fruits we have to bleach all the fruit with sulphur dioxide.

Q. Why?—A. So as to keep the fruit more whole.

Q. It is to preserve the form that the fruit is bleached, is it not?—A. In a way, yes; it is to allow the sugar to penetrate into the fruit.

Further, in response to the question as to whether the fruit would have the same form and firmness if it were not treated with sulphur, he says, "I don't think so."

The particular part of paragraph 488 under which the importer claims is "fruits in brine." That part of paragraph 217 under which it was assessed reads "all edible fruits, * * * prepared in any manner," from which it would appear that paragraph 217 is narrower than paragraph 488, under which importer makes his claim.

This commodity may in a way be said to be described in both of the paragraphs. In our judgment, however, paragraph 217 is more specific. However, if it were conceded that they were equally specific we would be bound under the rule of law adopted in such cases to classify the commodity under paragraph 217 rather than in the free list.

In the case of Causse Manufacturing Co. *v.* United States (151 Fed. 4; T. D. 27751), which arose under the law of 1897, a commodity

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similar in its treatment to that now before the board was under consideration. In that case it was cherries from which the pits had been removed and the fruit then washed several times in water, as a result of which the dirt and free juices were removed, then exposed to sulphur fumes and packed in casks in a weak solution of salt. The treatment in this case varies, as undoubtedly the liquor in which it is immersed should be construed to be brine. In the cited case it was not. The amount of preparation, however, in the case at bar is equal to or exceeds that in the Causse Manufacturing Co. case.

While not directly in point owing to the slight variation in the amount of salt, we are of the opinion that the Causse Manufacturing Co. case should be the guide to us in deciding this case. The language of the court makes interesting reading in connection therewith. The court says:

> We are also satisfied that the importations were not free under paragraph 559, and agree with the reasoning of the Board of General Appraisers and of the court below upon that question. In our judgment, they fall within the *more specific description* of paragraph 262, and were dutiable as "cherries," under the first part of that paragraph, or as "edible fruits * * * prepared in any manner," under the latter part. The first part would seem intended to apply to the fruits, ripe or unripe, specifically mentioned therein, when imported in their natural state. The latter part appropriately refers to the same fruits when something has been done to them to prepare them better for preservation, and which may consist either in drying, evaporating, or desiccating them, or in preparing them in any other manner.
>
> * * * * * * *
>
> The importations in controversy are removed from the enumeration of the first part of the paragraph and transferred to that of the second because they have been *prepared* within the meaning of that part of the paragraph. (Italics ours.)

From this it appears that the preparation of the fruit in the cited case, which is analogous to the preparation of the fruit in the case at bar, was sufficient to place it within the purview of paragraph 217 of the law of 1913 as prepared fruit.

We are therefore of opinion, as indicated above, that paragraph 217 more specifically provides for the commodity in question than paragraph 488. The protests are therefore overruled, affirming the finding of the collector.

(T. D. 39096—G. A. 8526.)

Emergency tariff act.

ADDITIONAL DUTY—EXPORT VALUE.

The finding by the appraiser and reporting by him to the collector of the export value of imported merchandise under the provisions of the emergency tariff act of 1921 is an act of appraisement. When that value thus found by the appraiser exceeds the value declared in the entry the collector should assess and collect the additional duty provided for in paragraph I of Section III, tariff act of 1913.

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United States General Appraisers, New York, April 25, 1922.

In the matter of protest 940976 of William A. Bird against the assessment of duty by the collector of customs at the port of Buffalo.

[Affirmed.]

Comstock & Washburn for the importer.

William W. Hoppin, Assistant Attorney General (*Marcus Higginbotham, jr.*, special attorney), for the United States.

Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers).

HAY, General Appraiser: This is a protest against the assessment of additional duty under the provisions of paragraph I of Section III of the tariff act of 1913 on a certain importation from Canada. The merchandise in question was entered at the Canadian market value. It was appraised under the provisions of the emergency tariff act of May 27, 1921, the appraiser stating the export value under section 302 of that act. Section 302 reads as follows:

SEC. 302. That for the purposes of this title the export value of imported merchandise shall be the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States, and plus, if not included in such price, the amount of any export tax imposed by the country of exportation on merchandise exported to the United States.

The entry in question was liquidated and duty assessed under paragraph 329 of the act of 1913. The export value as found by the appraiser under section 302 of the emergency tariff act exceeding the value declared in the entry, the collector levied and collected additional duties under that provision of paragraph I, supra, authorizing their collection.

So much of that provision as is pertinent to the question under consideration reads as follows:

The collector within whose district any merchandise may be imported or entered, whether the same has been actually purchased or procured otherwise than by purchase, shall cause the actual market value or wholesale price of such merchandise to be appraised; and if the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or *regulated in any manner by the value thereof* shall exceed the value declared in the entry, there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of 1 per centum of the total appraised value thereof for each 1 per centum that such appraised value exceeds the value declared in the entry.

In the case at bar the appraised value was the export price found by the appraiser. In ascertaining and reporting that price to the

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collector, as he is authorized by law to do, the appraiser exercises the function of an appraiser exactly the same as it has been held that he does when he reports that the entered value is correct.

Section 301 of the emergency tariff act reads as follows:

SEC. 301. That whenever merchandise which is imported into the United States is subject to an ad valorem rate of duty or to a duty based upon or regulated in any manner by the value thereof, duty shall in no case be assessed on a value less than the export value of such merchandise.

The collector was therefore, in our judgment, following the law that controlled his action in assessing the additional duty. The appraiser's finding the export value was an act of appraisement, and that value being in excess of the entered value it automatically placed the above-quoted provision from paragraph I in operation and the collector was right in assessing the additional duty.

The protest is therefore overruled.

(T. D. 39097—G. A. 8527.)

Validity of reappraisement—Samples.

The absence of samples in reappraisement proceedings, when it was within the power of the importer to produce evidence as to the value of the merchandise, does not render the reappraisement invalid. Stone & Downer's case, G. A. 6145 (T. D. 26690), Loeb & Schoenfeld's case, G. A. 6738 (T. D. 28849), and Oelrichs *v.* United States (2 Ct. Cust, Appls. 357; T. D. 32091) cited.

United States General Appraisers, New York, April 25, 1922.

In the matter of protests 941373, etc., of McKesson & Robbins (Inc.), against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

James W. Bevans for the importers.

William W. Hoppin, Assistant Attorney General (*Marcus Higginbotham, jr.*, special attorney), for the United States.

Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers; ADAMSON, G. A., concurring).

HAY, General Appraiser: These two protests attack the validity of the appraisement and reappraisement of certain merchandise upon the ground that at the time of appraisement neither the merchandise nor representative samples were examined by the appraiser, and that at the time of reappraisement neither the merchandise nor representative samples were before the general appraiser.

The merchandise in question is brushes of various kinds, toothbrushes, nailbrushes, hairbrushes, complexion brushes, military brushes, etc. There were four cases in one importation and five in the other. In full compliance with sections 2901 and 2939 of the Revised Statutes the collector ordered one of the four cases and one

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of the five cases sent to the public stores for examination by the appraiser. These cases were examined by the appraiser and no request was made by the importer for the examination of the other cases, but the appraiser asked for samples therefrom when he came to the examination of the merchandise in the cases sent to the public stores, and was advised that they had gone into consumption. The appraiser appraised the merchandise upon the samples before him and such other evidence as he had of the value thereof, and the importer appealed from that appraisement to reappraisement by a general appraiser. At the hearing before the general appraiser the importer failed and refused to offer any evidence as to the market value of the merchandise, but contented himself by proving that the appraiser did not have before him full representative samples of the merchandise contained in the cases not sent to the public stores, and there being no samples before the general appraiser he challenged the right of the general appraiser to reappraise the merchandise.

It would, indeed, be an anomalous proceeding that would permit an importer to appeal from the appraisement of his merchandise and then refuse to offer evidence of any character as to its value before the appellate tribunal and yet receive a decision in his favor. It is well settled, we think, that while an original appraisement may be illegal it is cured by a lawful reappraisement, so that we think the only question before us is the validity of the reappraisement by a general appraiser. Had the importer desired to raise the question of the validity of the appraisement he must have stood upon that, permitted the merchandise to go to liquidation, and then filed his protest upon the ground that the appraisement was invalid.—Stone & Downer Co.'s case, G. A. 6145 (T. D. 26690).

This brings us to the question, Was the reappraisement by the general appraiser invalid for the reason that he had not before him representative samples of the merchandise? If the importer had sincerely questioned the value placed upon the merchandise by the appraiser he could upon this reappraisement proceeding have offered testimony as to its value. Testimony with reference to the value of these commodities would have been more effective in aiding the general appraiser in reaching the right conclusion than any quantity of samples could have been. General appraisers are not experts, nor expected to be such. They try and determine the dutiable value of imported merchandise not, as experts, upon inspection, but upon the testimony of witnesses or such other evidence as to its value as may be submitted to them. Failure of the importer to offer any evidence of this kind before the general appraiser leaves us with quite a strong impression that in the value placed upon the merchandise by the general appraiser he was in no way wronged, or at least he did not know that he was or he would have been able to

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prove it, if, indeed, this failure did not cast some doubt upon the sincerity of his contention.

The question presented in this case has long since been settled so far as this board is concerned and our views very fully set forth in Loeb & Schoenfeld's case, G. A. 6738 (T. D. 28849). While there may be some doubt as to all of the decisions of the Court of Customs Appeals being in line with the views expressed in Loeb & Schoenfeld case, supra, we think, so far as the facts of this case are concerned, the conclusion we reached is in line with the views expressed by Judge Montgomery in Oelrichs & Co. *v.* United States (2 Ct. Cust. Appls. 357; T. D. 32091).

The general appraiser, the validity of whose decision is challenged in this case, is presumed to have rendered a right decision, and if the importer thought that he did not render such decision the law provided him a remedy, to wit, to appeal to reappraisement by a board of general appraisers. In a word, the law has made ample provision for the protection of the importer's rights, and if he will follow the beneficent provisions of the statutes there can, we think, be no case, except that it arises from an error of judgment on the part of the tribunal or a failure on the part of the importer to properly present the facts of his case, wherein the importer could be wronged. In modern days the law has not looked with favor upon taking advantage of a mere technicality, and the absence of samples from a tribunal without expert knowledge when it was within the power of the importer to have produced evidence as to the value of the merchandise is at most a technicality.

The protests are overruled.

CONCURRING OPINION.

ADAMSON, General Appraiser: Without dissenting from the views expressed in the majority opinion of the board or discussing the question as to how far requirements for samples refer to the original appraiser, I think there is another controlling reason why the protest should be overruled.

No question was made about samples in the cases which were examined, but the objection was made that no samples had been taken from the cases which were not under examination by the appraiser.

The language of the law refers to the absence of samples where no "party in interest had demanded the inspection of such merchandise or samples, and where the merchandise or samples *were reasonably accessible for inspection.*" The party in interest complaining here not only did not demand samples before the original appraiser, but, answering a demand made by the appraiser upon him for the samples, stated that they had gone into consumption. The only inter-

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pretation of that answer is that samples were not reasonably accessible for inspection. The appraiser then, upon such failure to produce samples, relied upon the samples that he had from the examined packages and such other evidence as was obtainable and appraised the merchandise.

The party in interest having once failed and refused to produce samples, can not afterwards take advantage of his own wrong to plead illegality because the representative of the other side acted without them.

I concur in the decision overruling the protest.

(T. D. 39098—G. A. 8528.)

Mica disks not parts of phonographs.

Unbored disks, composed of mica, and used as material in the construction of phonographic reproducers, are properly dutiable at the rate of 30 per cent ad valorem under the provision in paragraph 77 of the act of 1913 for "manufactures of mica," rather than under the provision in paragraph 374 of said act for "phonographs or parts thereof." G. A. 8468 (T. D. 38882) cited and followed.

United States General Appraisers, New York, April 28, 1922.

In the matter of protest 938662 of Plaza Music Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Strauss & Hedges (*J. L. Klingaman* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Samuel Isenschmid* and *Samuel M. Richardson*, special attorneys), for the United States.

Before Board 2 (FISCHER, HOWELL, and WELLER, General Appraisers).

FISCHER, General Appraiser: In his advisory return, the local appraiser reports the merchandise as consisting of "circular disks, not bored, composed of mica, and * * * not sufficiently manufactured to be identified as parts of phonographs." Duty was levied thereon at the rate of 30 per cent ad valorem under the provision in paragraph 77 of the act of 1913 for "manufactures of mica, or of which mica is the component material of chief value." The importers claim that these disks are properly dutiable at but 25 per cent ad valorem under the provision in paragraph 374 of said act for "phonographs * * * or parts thereof."

According to the testimony of the single witness who appeared herein, these particular disks are used as parts of reproducers for phonographs. A reproducer is described by the witness as "the sound box that goes on the end of the tone bar." The disk is inserted therein, and the "stylus bar is attached with a screw." It is not cemented in place, but is "just set between rubber gaskets." However, before it is capable of being so used, the disk, which is not bored as imported, must have a hole drilled through the center thereof.

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The question is: Are these articles, when imported as separate entities, properly classifiable as parts of phonographs? We do not think so. While it may be true that the reproducer, or sound box, should be so treated for tariff purposes, in that it fairly, if not accurately, responds to any reasonable understanding of what may constitute a part of a phonograph, nevertheless, we are not inclined to go so far as to interpret the scope of the provision as being comprehensive enough to likewise include within its operation separate shipments of each and every single item which may enter into the composition of a phonograph, or of any functioning part thereof. In other words, we are not prepared to hold that every disk, rubber gasket, screw, bar, washer, or any one of the numerous individual constituent items found in a phonograph, is properly classifiable as a part of a phonograph in the tariff meaning thereof, regardless of the fact that it is merely in the form of material destined to lose its identity as one of many items constituting some certain integral part of the whole machine.

In G. A. 7749 (T. D. 35578) we had occasion to construe a tariff provision for "harness, saddles, and saddlery, in sets or in parts, finished or unfinished." We said:

> Unquestionably it was the intention of Congress that the terms "sets" or "parts," as used in said paragraph 530, should be construed to mean something more than mere saddle nails, thread, pieces of leather, or any one of the other individual classes of materials which are employed in the manufacture of harness, saddles, and saddlery. Manifestly the provision contemplates manufactured articles which may be in a finished or an unfinished state, but which are definitely, generally, and uniformly known and recognized as "sets" or "parts" of harness, saddles, and saddlery, such as bridles, stirrups, reins, breechings, bellybands, back pads, etc.

And so, in the present instance, we believe that the provision for "parts" of phonographs was intended to embrace definite functioning portions of the phonographic mechanism, such as the cylinder, reproducer, etc., and that it does not necessarily extend to and likewise include therein every disk, rubber gasket, screw, bar, or other single constitutent, which may, when all assembled in place, merely serve as materials in the construction of some particular part of the whole machine. To otherwise construe the law would result in ignoring the provision for "parts," and in lieu thereof to read into the paragraph a provision for materials used in the manufacture of phonographs.

Such was the view taken by the Circuit Court for the Southern District of New York in United States *v.* Simon (84 Fed. 154). The court construed a provision for "parts of artificial flowers," and in excluding from the operation thereof certain india-rubber tubing used as material in making the flower stems, said:

> The paragraph under which this manufacture was assessed does not provide a duty on materials for artificial flowers, but for parts of artificial flowers, * * * and

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this tubing is not any finished part o fan artificial flower, but is merely a material from which the stems, as such a part of an artificial flower, can be made.

Possibly more directly in point is our recent ruling, G. A. 8468 (T. D. 38882), excluding iron disks used in the manufacture of automobile clutches from classification under a provision for parts of automobiles. In that case, we reasoned as in this case, and reached the following conclusion that—

While the disks, spokes, leaves, or engine parts may properly be considered as parts of automobile clutches, wheels, springs and engines, respectively, they would hardly be considered as separate entities, for tariff purposes, as being in the same category as the finished article of which either of them is only a part. We certainly can not regard a single metal disk with the same tariff importance as the finished clutch; and such was never the intention of Congress in enacting the provision in paragraph 119 for "finished parts of automobiles."

Following the principle enunciated in the above rulings, we hold these unbored mica disks not to be classifiable as parts of phonographs. The protest is therefore overruled and the decision of the collector affirmed.

(T. D. 39099—G. A. 8529.)

Books containing blank bills of exchange.

Books containing blank bills of exchange, lithographically printed, being precisely similar in construction to the ordinary check book or corporation stock book, with perforated lines running perpendicularly or horizontally along the pages to permit of the convenient removal of portions thereof, leaving the balance to serve as stubs permanently bound within the cardboard covers of the books, are properly dutiable at the rate of 15 per cent ad valorem under the provision in paragraph 329 of the act of 1913 for "books of all kinds, bound or unbound, including blank books," rather than under the provision in paragraph 325 of said act for "articles composed wholly or in chief value of paper lithographically printed."

United States General Appraisers, New York, April 28, 1922.

In the matter of protest 943147 of Balfour, Guthrie & Co. against the assessment of duty by the collector of customs at the port of San Francisco.

[Affirmed.]

Frank L. Lawrence (*Martin T. Baldwin* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Oscar Igstaedter*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and WELLER, General Appraisers).

FISCHER, General Appraiser: The articles in question are invoiced as "Bills/Exchange Books." Duty was levied thereon at the rate of 15 per cent ad valorem under the provision in paragraph 329 of the act of 1913 for "books of all kinds, bound or unbound, including blank books." It is claimed in the protest that "said merchandise is dutiable under paragraph 325 relating to articles lithographically

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printed, at 15 cents per pound, 5 cents per pound, or 7 cents per pound."

The case is submitted for decision upon the following mutually agreed statement of the facts:

That the articles are composed in chief value of paper lithographically printed in whole from stone; that the thinnest lithographic material found in said articles does not exceed 0.008 inch in thickness, and that the weight of the articles is 22 pounds per dozen.

That said articles are correctly represented by the official sample, which may be admitted in evidence and marked Exhibit 1, and that all the other papers transmitted by the collector may also be admitted in evidence herein.

In his brief filed herein counsel for the importers states:

We maintain that paragraph 329 can not cover this merchandise. Its provision for "books" can hardly be applied to a mere collection of blank bills of exchange, temporarily fastened together. The binding of these bills together is evidently for the mere purpose of conveniently keeping them until they are individually executed and put into use.

Merely a glance at the official sample is sufficient to show that it is a book. The printed subject matter therein alone distinguishes it from the ordinary check book issued by every bank, or for that matter any corporation stock book, draft book, bill book, or other books of similar construction. Such articles are books in every sense of the term, and we can not agree with the statement of importers' counsel "that they are more closely analogous to a pad of letter paper or scratch paper than they are to a 'book'." The New Standard Dictionary defines a "pad" as "a number of sheets of paper gummed together, usually on two edges, to be stripped off as they are used; as, a memorandum-pad; a water-color pad." The present articles have very heavy cardboard covers and the 100 leaves forming the contents are stitched and permanently bound within said covers in the same manner as those of any ordinary book which has been bound by a bookbinder.

Counsel for the importers, in his brief, states that these articles "come directly within the detailed language of paragraph 325, and they are of course ejusdem generis with the pictures, calendars, cards, booklets, labels, etc., expressly enumerated in that paragraph." Were it not that books are eo nomine and specifically provided for elsewhere in the tariff, it might be correct to say that the terms booklets and books are ejusdem generis. But in G. A. 7336 (T. D. 32327) this board had occasion to differentiate between the two terms. In that case we said:

According to the trade witnesses, whose testimony is uncontradicted, it is not the size of the book that determines the difference in trade between a "booklet" and a "book," and the importers in this case rely on the commercial meaning of the term. According to the proof, so offered, in trade and commerce, a booklet is understood to be an article used for greeting or souvenir purposes, sold and dealt in by art dealers

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and stationers, and made up of several leaves or inserts flimsily fastened within a folder of paper or other material. It is pointed out that such articles are not bound and that they are put together in an insecure manner, the leaves being fastened within the cover usually by a ribbon or cord, or perhaps in some other manner different from that contemplated in ordinary and usual binding. A book is distinguished therefrom, according to the same trade understanding, in that it is a collection of leaves of any size permanently stitched or bound together in a cover, the binding being of the kind of work performed by the bookbinder. It will be seen that the binding, where the question is a close one, is the real test, and not the size of the article.

The sample in evidence herein accurately corresponds with the definition of what constitutes a book in the trade sense of the term, as above set forth, in that it is permanently bound, the leaves thereof being stitched to the cover, "the binding being of the kind of work performed by the bookbinder." It is so made that the stubs of the bills of exchange, like those of the ordinary check book or stock book, are held permanently in place between the covers for record purposes, like any ordinary book. There is no question in our minds but that the article is a bound book in every sense of the term and that it must be so regarded for tariff purposes.

The provision for books in paragraph 329 is all comprehensive, since it is for "books of all kinds, bound or unbound," and the only exception thereto, in so far as paragraph 325 is concerned, would be in the case of "books of paper or other material for children's use, lithographically printed in whole or in part, not exceeding in weight twenty-four ounces." The expressed inclusion within the latter paragraph of children's books of the kind mentioned would ordinarily mean the exclusion of all other lithographically printed books, including children's books weighing more than 24 ounces. Expressio unius est exclusio alterius.

The only other provision in said paragraph 325 which may be said to have any applicability at all to the present merchandise would be that for "other articles composed wholly or in chief value of paper, lithographically printed * * * not exceeding eight one-thousandths of an inch in thickness." But that provision can not possibly apply in view of the presence of the provision for "books of all kinds" in paragraph 329.

In United States *v.* Field (7 Ct. Cust. Appls. 430; T. D. 36985) the competing provisions under construction were "fans of all kinds, except common palm-leaf fans," as against one covering "articles * * * embroidered in any manner * * * by whatever name known." The court said:

The enumeration of "fans of all kinds" is itself absolutely comprehensive in terms, and, as was said by this court in the Harper case, infra, it "naturally suggests every imported fan, regardless of component material or condition."

Likewise, in the present case, the provision for "books of all kinds" is certainly broad enough in scope to include all lithographically

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printed books which may not be eo nomine and specifically provided for elsewhere in the tariff. There being no such specific provision which would embrace the present books, we hold that the collector properly classified them under the provision mentioned in paragraph 329 for "books of all kinds."

The protest is therefore overruled and the decision of the collector affirmed.

(T. D. 39100.)

Wheat screenings—Clerical error.

UNITED STATES *v.* WOODWARD-NEWHOUSE CO. (No. 2129).

ENTERED VALUE—CLERICAL ERROR.

Where the entry stated correctly the number of bushels imported and the price per bushel, but erroneously extended the total, the "entered value" under paragraph I, Section III, tariff act of 1913, was the unit value and not the erroneous extension. It was the duty of the collector to multiply the number of bushels by the value per bushel and assess duty upon the result. It was error for him to liquidate upon the basis of the erroneous extension in the entry. The correction of such an error is not vested, by paragraphs I and Y, Section III, tariff act of 1913, in the Secretary of the Treasury; but is within the jurisdiction of the Board of United States General Appraisers and the United States Court of Customs Appeals.

United States Court of Customs Appeals, April 10, 1922.

APPEAL from Board of United States General Appraisers, Abstract 44356.

[Affirmed.]

William W. Hoppin, Assistant Attorney General (*Marcus Higginbotham, jr.*, special attorney, of counsel), for the United States.

Submitted on record by appellee.

[Oral argument February 23, 1922, by Mr. Hoppin.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

BARBER, Judge, delivered the opinion of the court:

There is no appearance or brief in behalf of importer in this case.

The facts are meager. The invoice stated the merchandise to be 1,075 bushels of wheat, valued at $2.20 per bushel. The total value, however, was therein carried out or extended at $3,365, when in fact it should have been $2,365. The entry papers are not before us, but obviously the error in the invoice was reproduced in the entry, and the Government so assumes. The correct rate of duty on the importation was 10 per cent ad valorem.

On liquidation the collector regarded $3,365 as the entered value and apparently took duty of 10 per cent ad valorem thereon. He reported to the board that "The invoice calls for 1,075 bu. at $2.20

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per bu., which is carried out as $3,365, and this amount should have been $2,365, from which is deducted the amount of the freight, $150."

The importer protested this liquidation, pointing out that the true value of the importation was $2,365, and that the facts disclosed a manifest clerical error.

Upon this state of facts the Board of General Appraisers found there was error apparent upon the face of the invoice; said it was apparent that the duty of 10 per cent should have been assessed upon $2,365 instead of upon the greater amount, sustained the protest, and directed reliquidation accordingly.

Upon the argument in this court no reference is made to the matter of the freight. No additional duties were assessed.

The Government, as we understand, makes the following contentions:

1. That the larger; that is, the extended amount of $3,365, was and must be regarded as the entered value of the merchandise, and the amount upon which the normal duty must be assessed under paragraph I of Section III of the tariff act of 1913, which provides, among other things, that—

> The duty shall not, however, be assessed in any case upon an amount less than the entered value, unless by direction of the Secretary of the Treasury.

2. That this larger amount so carried out or extended is the result of a manifest clerical error, which can not, it is urged, be corrected by the collector, the Board of General Appraisers, or this court, because of the provision in paragraph Y of said Section III, that—

> the Secretary of the Treasury is hereby authorized to correct manifest clerical error in any entry or liquidation for or against the United States at any time within one year of the date of such entry, but not afterwards—

claiming that this last quoted provision vests exclusive power to correct manifest clerical error in the Secretary of the Treasury.

In this case that officer has not directed duty to be taken upon an amount less than $3,365, and it does not appear that application has been made to him for such a direction.

The record contains no information as to what action the appraiser or other customs officers, aside from the collector, took with reference to this importation. It must be presumed, however, that the proper officers found the entered number of bushels, 1,075, to be correct, and that the entered unit price or value of $2.20 per bushel was the dutiable market value thereof, and hence was correct.

It is obvious therefore that the determinative fact regarding the Government's first contention is, what must be regarded as the entered value. If it be the erroneously extended sum of $3,365 the contention should be upheld.—Mills & Gibbs *v.* United States (8 Ct.

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Cust. Appls. 31; T. D. 37164). If, on the other hand, the entered value is $2.20 per bushel, that is, if the value stated in the entry as the unit value of the wheat be regarded as the entered value, a different conclusion may result.

It is important to remember that this case is one where the number of units and the value per unit have each been specifically stated in the invoice and entry, and found correct by the proper customs officers, and not a case where the number of units has been stated and the gross value thereof only carried out in the entry, or a case where no units have been mentioned, and the entered value refers to the merchandise in bulk.

In United States *v.* Kuttroff (9 Ct. Cust. Appls. 239; T. D. 38204), opinion by De Vries, Judge, in defining the terms "appraised value" and "entered value" under paragraph I it was said—

> Inasmuch as the provision literally requires comparison of two values, necessarily they must, to be thus comparable, be the same in kind. That is to say, if the one is a unit value so must be the other, and if the one is a gross or quantity value so, to be comparable, must be the other.

After an illuminating discussion and review of the authorities it was concluded—

> That the "appraised value" of merchandise is the unit value and not the total value of the importation is well settled in customs adjudication.

We do not overlook the fact that in that case and in many, if not all the cases therein cited and referred to, the question of undervaluation was under consideration, but such fact can not change the conclusion which should be reached in this case in determining what was the entered value.

It is obvious that there can not be two different entered values of the same merchandise, and that the entered value thereof once ascertained becomes the entered value for all purposes under the tariff law.

Without undertaking again to review or discuss the authorities under examination in the case last cited, it is sufficient for the purposes of this opinion to say that they definitely and uniformly establish the rule that where an entry stated the entered value of the unit of merchandise duty must be assessed upon the appraised value of the unit multiplied by the number of units. In other words, the gross entered value in such case is ascertained by multiplying the entered unit value by the true number of units.

For convenient reference, we again cite authorities referred to in the case of United States *v.* Kuttroff, supra:

Marriott *v.* Brune (9 How. 50 U. S. 619); Saxonville Mills *v.* Russell (116 U. S. 13); Manhattan Gas-Light Co. *v.* Maxwell (2 Blatch. 405; 16 Fed. Cases 600); Yznaga et al. *v.* Redfield (4 Blatch. 469; 30 Fed. Cases 903); United States *v.* Nash et al. (4 Cliff. 107;

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27 Fed. Cases 75); United States *v.* Bush (5 Ct. Cust. Appls. 127; T. D. 34187); T. D. 4502; T. D. 8159; T. D. 14858 (G. A. 2541); T. D. 21525 (G. A. 4529); T. D. 23871 (G. A. 5178); T. D. 25767 (G. A. 5848); T. D. 29876 (G. A. 6916).

It is our conclusion that the itemized entered value of $2.20 per bushel was the entered value of the merchandise in this case. This having been found correct by the appraiser, it was the duty of the collector in determining the dutiable value of the importation to multiply such unit value by the number of units and upon the resulting amount, after reducing the same by any sums to which the importer was lawfully entitled, assess the duty.

This conclusion makes it unnecessary to consider the second contention urged by the Government, because, the erroneously extended amount was not the entered value of the merchandise, and it therefore makes no difference whether it was the result of a clerical error, manifest or otherwise. That amount presented nothing for the consideration of the collector in assessing duties upon the importation.

The fact that the collector, acting under a mistaken view of the law, saw fit to liquidate the entry upon a larger amount than the gross entered value, ascertained as above pointed out, can not make a case of manifest clerical error under paragraph Y. To so hold would, if the Government's second contention be sound, clothe the collector with power in any liquidation to compel the importer to apply to the Secretary of the Treasury as the final arbiter for relief from an unlawful assessment by the collector, instead of appealing to the Board of General Appraisers and this court, each of which tribunals has been created and vested with jurisdiction of such cases.

The judgment of the Board of General Appraisers is *affirmed.*

(T. D. 39101.)

Antipasto—Fish in oil.

RUSSO & CO. *v.* UNITED STATES (No. 2142).

CONSTRUCTION, PARAGRAPH 216, TARIFF ACT OF 1913—"FISH * * * PACKED IN OIL OR IN OIL AND OTHER SUBSTANCES"—"ANTIPASTO."

A relish known as "antipasto," composed of fish, olives, onions, gherkins, artichokes (probably) and oil, fish chief value, can not be regarded as "fish * * * packed in oil" under paragraph 216, tariff act of 1913. It is not fish packed in oil, but is fish and the other things packed in oil. Neither is it "fish * * * packed * * * in oil and other substances" under the paragraph, since the other substances do not form any part of the packing for the fish. It is a nonenumerated manufactured article of two or more materials and by virtue of the mandate of paragraph 386, tariff act of 1913, that such shall be assessed as if composed wholly of the component material of chief value, is dutiable at the rate borne by fish in tin packages not specially provided for, under paragraph 216.

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United States Court of Customs Appeals, April 10, 1922.

APPEAL from Board of United States General Appraisers, Abstract 44547.

[Reversed.]

Comstock & Washburn (*J. Stuart Tompkins* of counsel) for appellants.

William W. Hoppin, Assistant Attorney General (*Harry M. Farrell*, special attorney, of counsel), for the United States.

[Oral argument February 24, 1922, by Mr. Tompkins and Mr, Hoppin.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

BARBER, Judge, delivered the opinion of the court:

The merchandise here is called "antipasto." It was assessed by the collector as fish in oil in tins at 25 per cent ad valorem under paragraph 216 of the tariff act of 1913, the relevant parts of which are:

Fish, except shellfish, by whatever name known, packed in oil or in oil and other substances, in bottles, jars, kegs, tin boxes, or cans, 25 per centum ad valorem; and all other fish, except shellfish, in tin packages, not specially provided for in this section, 15 per centum ad valorem; * * *

Importers protested, claiming therein, as set forth in their brief in this court, the merchandise dutiable "at 15 per cent ad valorem under paragraph 385 as a nonenumerated article manufactured in whole or part, or under paragraph 386, and the second clause of paragraph 216 as fish in tins at 15 per cent ad valorem, the rate which a nonenumerated article composed of several materials would take, provided fish was the single component of chief value."

The relevant part of paragraph 386 is—

* * * and on articles not enumerated, manufactured of two or more materials, the duty shall be assessed at the highest rate at which the same would be chargeable if composed wholly of the component material thereof of chief value; * * *

Paragraph 385 provides for a duty of 10 per cent ad valorem on raw or unmanufactured articles not enumerated or provided for, and for a duty of 15 per cent ad valorem on articles manufactured in whole or in part not provided for.

When the protest came on for hearing before the Board of General Appraisers it was stipulated that fish was the component material of chief value, and two samples were offered and received in evidence.

Upon this state of facts the Board of General Appraisers overruled the protest. In its opinion it referred to the stipulation and to the samples, and then said:

An examination of the sample seems to indicate that the fish are packed in oil; at any rate it does not by visual examination show the contrary with sufficient force to overcome the presumption that the collector was correct.

Thereupon the importers appealed.

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At the hearing of the case in this court one of the samples of the importation, a small tin box, was opened for the purpose of informing the court more definitely of what "antipasto" was composed. Inspection thereof clearly shows the material to be olives, onions, gherkins, artichokes (probably), fish and oil, of which, pursuant to the stipulation, it is assumed fish is the component material of chief value. The inspection also shows that so far as quantity or bulk is concerned the fish does not equal the aggregate quantity or bulk of the other components, excluding the oil. It is imported in tin boxes.

If the sample can contained nothing but the quantity of fish and oil now therein, the conclusion of the board would be clearly justified, but we can not close our eyes to the fact that it contains four articles of vegetable origin, and that the oil is used as a packing therefor, as well as a packing for the fish. Though the fish is the component of chief value, the other articles are at least in the aggregate the predominant components as compared with the fish. We do not think in the common meaning of the term, as found in paragraph 216, this merchandise is fish packed in oil, or in oil and other substances, because we do not believe Congress intended in the paragraph to regard as a packing for fish such a quantity and variety of vegetable products as are in the sample can here.

The imported article is apparently in fact just what it is labeled namely, a relish, and fish is no more, if as much, the important element thereof than the aggregate of the component vegetable products. Therefore the article itself overthrows the presumed correctness of the collector's classification as fish in oil, or as fish packed in oil and other substances, as claimed by the Government.

The question recurs as to the proper classification of the merchandise. It is called "antipasto," a new name probably originally coined and now used to describe this particular commodity. It is neither fish packed in oil or in oil and other substances in tins, nor fish in tins under paragraph 216. It is rather a nonenumerated manufactured article, and because it is manufactured of more than two materials it must, by reason of the quoted part of paragraph 386, be assessed at the highest rate at which it would be chargeable if composed of its component material of chief value, viz, fish.

Fish, not shellfish, in tins, is, under the second clause of the quoted part of paragraph 216, dutiable at 15 per cent ad valorem, and this "antipasto" therefore takes that rate of duty as claimed by the importers.

An article called "antipasto" made of the same kind, or of similar materials as that now before us, has by the Board of General Appraisers consistently been held dutiable at the rate provided for fish in tins under tariff statutes not essentially different from those now under consideration.

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See T. D. 27886, decided February 4, 1907, under the act of 1897; also T. D. 34186 (Abstract 34766), decided February 10, 1914, under the act of 1909; also under the same act T. D. 34889 (Abstract 36828); also Abstract 37679 found in volume 28 of the Treasury Decisions at page 666, and Abstract 37706 found in the same volume at page 721.

It should be observed that in some of these decisions such assessment has been upheld in opposition to the importer's protest.

In connection with these decisions of the Board of General Appraisers it is proper to note, however, that in the act of 1897 (see paragraph 258 thereof), the statute provided for fish "packed in oil or otherwise," etc.; that in the act of 1909 (see paragraph 270), the provision was for fish "packed in oil," etc., while in the present act it will be noted the language is "packed in oil or in oil and other substances" instead of "in oil or otherwise" as in the act of 1897.

Why the words "or otherwise" were omitted from the act of 1909 does not appear. It does appear that when the act of 1913 was under consideration by the Ways and Means Committee it was urged that the words "or otherwise" be restored to the fish paragraph, upon the ground, as stated, that by reason of their omission from the act of 1909 there had been an increased importation of certain foreign products greatly detrimental to one phase of the fish canning industry in this country, which, by reason of certain facts set forth in the representation to the committee, it was feared would be increased. See volume 3 of the hearings before Ways and Means Committee relative to the tariff act of 1913 at page 2823.

The Government urges that the contention of importers is inconsistent with our conclusion in Benson *v.* United States (4 Ct. Cust. Appls. 467; T. D. 33882), while the importers largely rely upon that case as an authority here.

We think our present conclusion is consistent with the view there adopted.

The merchandise was so-called fish balls or fish pudding made of haddock, flour, and milk, fish being the component of chief value. It had been classified and assessed under paragraph 270 of the act of 1909 as other fish, except shellfish, in tin packages, which classification was sustained by the board and in this court. The opinion by Montgomery, then presiding judge, contains an enlightening and exhaustive discussion and review of the authorities, and may be referred to. We note in this connection that in that opinion it is stated that the board relied upon T. D. 21785. The correct reference should have been instead to T. D. 21758.

We do not find the cases of Smith & Co. *v.* United States (5 Ct. Cust. Appls. 40; T. D. 34008) or of Strohmeyer & Arpe Co. *v.* United

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States (5 Ct. Cust. Appls. 527; T. D. 35175), also cited by the Government, to sustain a conclusion contrary to that reached by us in the instant case.

The result is that the judgment of the Board of General Appraisers is *reversed*.

(T. D. 39102.)

Lithographic containers in the form of envelopes.

Lithographic containers in the form of envelopes dutiable under paragraph 325, tariff act of 1913.

TREASURY DEPARTMENT, *April 29, 1922.*

SIR: The department is in receipt of your letter of the 27th instant, transmitting a letter from the appraiser in regard to the classification of lithographic containers in the form of envelopes.

In your letter of the 4th ultimo you transmitted a letter from the appraiser, dated the 2d idem, in which he reported that articles of this character would be advisorily returned by him as paper envelopes at the rate of 15 per cent ad valorem under paragraph 327 of the tariff act. The appraiser in his letter of the 26th instant states that upon a reconsideration of the question of the proper classification of these containers, he has reached the conclusion that, in view of the decision of the Board of United States General Appraisers, G. A. 1384 (T. D. 12788), these articles are properly dutiable as lithographs not exceeding eight one-thousandths inch in thickness at the rate of 15 cents per pound under paragraph 325 of the tariff act of October 3, 1913.

In transmitting the appraiser's letter you state that your office concurs in the appraiser's opinion as to the proper classification of these lithographic containers and would be guided by his return.

The merchandise, the subject of the board's decision cited by the appraiser, consisted of so-called embroidery envelopes, and the board states that although known in the embroidery trade as embroidery covers or envelopes they were not designed for nor could they be put to any of the uses for which the envelopes of commerce are intended to be employed; that is to say, for covering and holding letters, documents, etc., for transmission through the mail.

Following the reasoning of the board in the decision cited, the department is of the opinion that lithographic containers which are used for holding articles, such as ladies' hair nets and other articles of merchandise, are not dutiable under the provision in paragraph 327 of the tariff act of October 3, 1913, for paper envelopes, but are

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properly dutiable as articles lithographically printed under paragraph 325 of the said act, and you are accordingly directed to assess duty upon these lithographic containers under paragraph 325 of the tariff act. Inasmuch, however, as it has been the practice to classify these articles as envelopes under paragraph 327, these instructions will become effective in regard to the classification of articles of the character under consideration imported or withdrawn from warehouse 30 days from the date hereof.

Respectfully, ELMER DOVER,
(85182.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 39103.)

Common carrier.

Discontinuance of common carrier's bond.

TREASURY DEPARTMENT, *May 2, 1922.*

SIR: At the request of Williams, Dimond & Co., dated April 15, 1922, the discontinuance of its common carrier's bond approved April 19, 1920, and transmitted to your office with department letter of April 27, 1920, is hereby authorized.

You should mark the bond discontinued and retain it on file in your office to cover any liability that may have accrued thereunder.

Respectfully, ELMER DOVER,
(108483.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *San Francisco, Calif.*

(T. D. 39104.)

Foreign currencies—Rates of exchange.

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), emergency tariff act of May 27, 1921.

TREASURY DEPARTMENT, *May 1, 1922.*

To Collectors of Customs and Others Concerned:

The appended table of the values of certain foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), act of May 27, 1921, during the period from April 21 to April 27, 1922, both inclusive, is published for the information of collectors of customs and others concerned.

(103512.) ELMER DOVER, *Assistant Secretary.*

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Values of foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), emergency tariff act of May 27, 1921.

PERIOD APRIL 21 TO 27, 1922, INCLUSIVE.

Country.	Name of currency.	Apr. 21.	Apr. 22.	Apr. 24.	Apr. 25.	Apr. 26.	Apr. 27.
Europe:							
Austria	Krone	$0.000134	$0.000134	$0.000134	$0.000134	$0.000133	$0.000131
Belgium	Franc	.0857	.0860	.0860	.0856	.0849	.0847
Bulgaria	Lev	.0069	.0069	.006933	.00695	.006983	.006917
Czechoslovakia	Krone	.019761	.019706	.019653	.019578	.019517	.019494
Denmark	do	.2124	.2128	.2128	.2124	.2123	.2125
England	Pound sterling	4.4194	4.4235	4.4300	4.4279	4.4289	4.4281
Finland	Markka	.018788	.018663	.019638	.018913	.018944	.020519
France	Franc	.0930	.0934	.0935	.0930	.0926	.0923
Germany	Reichsmark	.003598	.00375	.004163	.003769	.003541	.003507
Greece	Drachma	.0449	.0449	.0449	.0450	.0448	.0448
Holland	Florin or guilder	.3796	.3796	.3797	.3797	.3802	.3807
Hungary	Krone	.001288	.0013	.001331	.001351	.001326	.0013
Italy	Lira	.0540	.0546	.0545	.0540	.0538	.0534
Norway	Krone	.1905	.1903	.1884	.1885	.1897	.1889
Poland	Polish mark	.000271	.000268	.000268	.000268	.000267	.000264
Portugal	Escuda	.0779	.0781	.0784	.0792	.0789	.0784
Rumania	Leu	.007391	.007391	.007438	.0074	.007263	.007167
Serbia	Dinar	.013343	.014029	.015886	.016243	.015229	.014357
Spain	Peseta	.1553	.1553	.1556	.1558	.1553	.1553
Sweden	Krona	.2602	.2601	.2602	.2602	.2599	.2594
Switzerland	Franc	.1945	.1945	.1946	.1946	.1945	.1946
Yugoslavia	Krone	.003311	.003472	.003967	.004031	.003822	.003594
Asia:							
China	Chefoo tael	.7892	.7817	.7950	.7917	.7917	.7917
Do	Hankow tael	.7892	.7850	.7950	.7917	.7917	.7917
Do	Shanghai tael	.7529	.7515	.7560	.7558	.7548	.7554
Do	Tientsin tael	.7942	.7883	.7992	.7967	.7967	.7975
Do	Hongkong dollar	.5518	.5514	.5539	.5582	.5575	.5593
Do	Mexican dollar	.5485	.5513	.5528	.5523	.5515	.5457
Do	Tientsin or Peiyang dollar.	.5650	.5667	.5708	.5692	.5692	.5692
Do	Yuan dollar	.5550	.5567	.5608	.5592	.5592	.5592
India	Rupee	.2776	.2781	.2785	.2794	.2783	.2783
Japan	Yen	.4732	.4735	.4734	.4741	.4736	.4732
Singapore (S.S.)	Dollar	.5000	.5025	.5008	.5000	.5000	.5008
North America:							
Canada	do	.978708	.982484	.985347	.985764	[illegible]6688	.982361
Cuba	Peso	.997938	.998063	.997938	.998063	.997938	.997938
Mexico	do	.49575	.493375	.493594	.49295	.4915	.491625
Newfoundland	Dollar	.977186	.980781	.983906	.984688	.984375	.980313
South America:							
Argentina	Peso (gold)	.8059	.8080	.8086	.8096	.8107	.8129
Brazil	Milreis	.1361	.1359	.1367	.1367	.1369	.1355
Uruguay	Peso	.7839	.7841	.7853	.7840	.7843	.7851

(T. D. 39105.)

Restoration of Customs Forms 5961 and 6011.

TREASURY DEPARTMENT, *May 3, 1922.*

To Collectors and Other Officers of the Customs:

Your attention is invited to T. D. 37919 of February 20, 1919, and T. D. 38854 of September 19, 1921, abolishing Customs Forms 5961, "Lading inspector's record of I. T. shipments," and 6011, "Assignment of U. S. customs guards and roundsmen," respectively.

Acting upon the recommendation of the collector of customs at New York that these forms be revived, the department has concurred in the recommendation of that officer and Forms 5961 and 6011 are accordingly restored.

A supply of each of these forms may be obtained by making requisition therefor on the Division of Printing and Stationery.

(93120.) ELMER DOVER, *Assistant Secretary.*

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(T. D. 39106.)

Drawback.

Synopsis of drawback decisions issued between May 1 and 6, 1922, inclusive.

(A) *Cloth, tinsel, tarnish-proofed.*—T. D. 37483 (B) of January 15, 1918, providing for the payment of drawback on imported tinsel cloth proofed against tarnishing by the Commonwealth Manufacturing Co., of Brooklyn, N. Y., for the account of J. Einstein (Inc.), of New York, N. Y., extended to provide for the payment of drawback on imported tinsel cloth proofed against tarnishing for the account of J. Einstein (Inc.), by the Atlantic Chemical Co., of Newark, N. J.

Extension effective on and after June 7, 1921.

Sworn statements of J. Einstein (Inc.) and the Atlantic Chemical Co., dated March 30 and March 29, 1922, transmitted to the collector of customs at New York, N. Y., on May 3, 1922. (93859–1.) (Signed) ELMER DOVER, *Assistant Secretary.*

(B) *Confectionery.*—Manufactured by the New England Confectionery Co., of Boston, Mass., with the use of imported refined sugar or refined sugar produced wholly or in part from imported raw sugar.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer, dated April 13, 1922, showing, in the case of each lot of confectionery manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of the refined sugar used and the quantity of each kind of confectionery obtained. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the refined sugar used in the manufacture of the exported confectionery, as shown by the abstract from the manufacturing record.

Rate effective on and after February 10, 1922.

Sworn statement dated April 13, 1922, transmitted to the collector of customs at Boston, Mass., on May 3, 1922. (34877.) (Signed) ELMER DOVER, *Assistant Secretary.*

(C) *Films, motion picture, developed.*—Produced by the Tremont Film Laboratories Corporation, of New York, N. Y., for the account of the John D. Williams Export Corporation, of New York, N. Y., from imported motion picture films exposed but undeveloped.

The drawback allowance for each motion picture film exported shall not exceed the duty paid, less 1 per cent thereof, on the imported moving picture film used in the production thereof.

Rate effective on and after March 6, 1922.

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Supplemental sworn statements may be filed covering additional factories developing motion picture films for the account of the John D. Williams Export Corporation, and upon verification of such supplemental sworn statements and approval by the department, drawback may be allowed on motion picture films developed at such factories.

Sworn statements of the Tremont Film Laboratories Corporation and the John D. Williams Export Corporation, dated March 1 and 31, 1922, transmitted to the collector of customs at New York, N. Y., on May 2, 1922. (101604–5.) (Signed) ELMER DOVER, *Assistant Secretary.*

(D) *Fruit, canned.*—Produced by the F. E. Booth Co., of San Francisco, Calif., at its factories at Pittsburg and Centerville, Calif., with the use of imported refined sugar or refined sugar produced wholly or in part from imported raw sugar.

Records shall be kept and methods pursued in the manner described in the sworn statement of the producer, dated March 27, 1922, and at the close of each canning season there shall be filed an abstract from the factory record showing, as to the canned fruit of each kind, grade, and size, the quantity packed with the use of duty-paid sugar, stated in terms of cans and cases, and the quantity of duty-paid sugar from each delivery lot used in packing the same. With such abstract there shall be filed a certificate of manufacture as prescribed by article 866 of the Customs Regulations, showing the particulars of importation of each delivery lot of sugar used at the factory during the canning season.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of duty-paid sugar used in packing the exported canned fruit, such quantity to be determined by prorating the aggregate quantity of sugar used during the canning season to the canned fruit of each kind, grade, and size, according to a schedule which will be furnished to the collector of customs at San Francisco, Calif., at the close of the canning season by the special agent at that port, in accordance with instructions this day issued to that officer.

Supplemental sworn statements may be filed covering additional factories canning fruit for exportation with benefit of drawback, and upon verification of such supplemental statements and approval thereof by the department, drawback may be allowed on fruit canned at such factories in accordance therewith.

Rate effective on and after September 22, 1921.

Sworn statement dated March 27, 1922, transmitted to the collector of customs at San Francisco, Calif., on April 29, 1922. (103746–29.) (Signed) ELMER DOVER, *Assistant Secretary.*

(E) *Fruit, canned.*—Produced by the Hunt Bros. Packing Co., of San Francisco, Calif., at its factories at Hayward, San Jose, Los

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Gatos, and Exeter, Calif., and Salem, Oreg., with the use of imported refined sugar or refined sugar produced wholly or in part from imported raw sugar.

Records shall be kept and methods pursued at each of the factories in the manner described in the sworn statement of the producers, dated March 24, 1922, and at the end of each canning season there shall be filed an abstract from the factory records showing, as to the canned fruit of each kind, grade, and size, the quantity packed with the use of duty-paid sugar, stated in terms of cans and cases, and the quantity of duty-paid sugar from each delivery lot used in packing such fruit. With each such abstract there shall be filed a certificate of manufacture in the form prescribed by article 866 of the Customs Regulations showing the particulars of importation of each delivery lot of sugar used at the factory during the canning season.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the sugar used in the production of the exported canned fruit, such quantity to be determined by prorating the aggregate quantity of duty-paid sugar used during the season to the canned fruit of each kind, grade, and size produced, as shown by the abstract from the factory records, in accordance with a schedule which will be furnished to the collector of customs at San Francisco, Calif., at the close of each canning season by the special agent at that port, according to instructions issued to that officer under even date.

Supplemental sworn statements may be filed covering additional factories canning fruit for exportation with benefit of drawback, and upon verification of such statements and approval thereof by the department drawback may be allowed on canned fruit packed at such factories in accordance therewith.

Rate effective on and after June 27, 1921.

T. D. 36051 of January 10, 1916, revoked.

Sworn statement dated March 24, 1922, transmitted to the collector of customs at San Francisco, Calif., on April 28, 1922. (103746–3.) (Signed) ELMER DOVER, *Assistant Secretary*.

(F) *Oil of cloves.*—Manufactured by George Lueders & Co., of New York, N. Y., with the use of imported cloves.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer, dated January 10, 1922, showing, in the case of each lot of oil of cloves manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of the imported cloves used, and the quantity of oil of cloves obtained. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

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The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the imported cloves used in the manufacture of the exported oil of cloves, as shown by the abstract from the manufacturing record.

Rate effective on and after January 11, 1922.

Sworn statement dated January 10, 1922, transmitted to the collector of customs at New York, N. Y., on May 3, 1922. (100959–1). (Signed) ELMER DOVER, *Assistant Secretary.*

(T. D. 39107—G. A. 8530.)

Cabinet wood.

Japanese white oak is a cabinet wood, and boards sawn therefrom, known as Nos. 1 and 2 commons, are also cabinet wood regardless of the purposes for which they may be used. *Held* to be subject to duty at the rate of 10 per cent ad valorem under the provisions of paragraph 169 of the tariff act of 1913.—Drakenfeld & Co. *v.* United States (2 Ct. Cust. Appls. 512; T. D. 32248); Downing & Co. *v.* United States (6 Ct. Cust. Appls. 447; T. D. 35984); United States *v.* Snow's U. S. Sample Express Co. (8 Ct. Cust. Appls. 351; T. D. 37611); United States *v.* Owen & Co. (4 Ct. Cust. Appls. 480; T. D. 33887); Wheeler, Elder & Elder *v.* United States (11 Ct. Cust. Appls. —; T. D. 38752); G. A. 7357 (T. D. 32454) and G. A. 7682 (T. D. 35131), cited.

United States General Appraisers, New York, May 4, 1922.

In the matter of protests 776487, etc., of Mitsui & Co. et al. against the assessment of duty by the collectors of customs at the ports of Los Angeles and San Francisco.

[Affirmed.]

Frank L. Laurence (*Martin T. Baldwin* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Charles D. Laurence*, special attorney), for the United States.

Before Board 1 (MCCLELLAND, SULLIVAN, and BROWN, General Appraisers).

MCCLELLAND, General Appraiser: The merchandise which is the subject of these protests is white oak lumber. The collectors at the ports of San Francisco and Los Angeles assessed it with duty at the rate of 10 per cent under paragraph 169 of the tariff act of October 3, 1913, and the claim on behalf of the protestants is that it should have been admitted to free entry as lumber not specially provided for under paragraph 647 of the same act.

Three witnesses, all called on behalf of the protestants, testified on the trial of the issue. One testified that he had been familiar with the lumber business of Mitsui & Co., one of the protestants, who are importers and dealers in Japanese white oak, and that they had imported the bulk of all white oak lumber from Japan during the past 8 or 10 years. He estimated that some 65 per cent or more of white oak lumber known as 1 and 2 common was used in making plain

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flooring previous to the war, and that since the war the proportion of its use for such purpose has been fully 60 per cent.

It is evident that protestants rely for the success of their contention for free entry on the question of chief use.

We have, as already indicated, no testimony on the part of the Government either as to use or as to any other fact. Nevertheless, it is questionable how much weight ought to be given to the approximations of use above stated in the absence of any detail upon which they are based.

At the close of the trial the parties stipulated the following facts:

(1) That the merchandise is Japanese white oak lumber known as No. 1 and No. 2 common, plain sawn.

(2) That it is used to a substantial extent for cabinet purposes.

(3) That the chief use of Japanese white oak of all grades, taken as a whole, is for cabinet purposes.

(4) That the No. 1 and No. 2 common above referred to, which is sold and used or flooring, is of the same quality as the No. 1 and No. 2 common which is used for cabinet purposes.

After which, counsel for the Government made the following statement:

Further, is it disputed that the No. 1 common plain sawn is the same as No. 1 common plain sawn in the case of Wheeler *v.* United States, suit No. 2060, decided by the Court of Customs Appeals in T. D. 38752?

To which counsel for the importers replied:

That is not disputed; but we maintain that fact is immaterial, as we have a new record here.

In view of the foregoing stipulated facts the testimony taken is of little consequence, excepting probably that part of it giving approximations as to use.

Counsel for the importers in his brief makes this significant statement:

Now, it so happens that plain or common flooring, which is nowadays made in tremendous quantities from oak, *is made almost exclusively from the grade known as "commons," and in particular from plain-sawn commons*, the quarter-sawn being put to other uses. Accordingly, at the trial in the present case the proof was directed specifically toward showing the chief use of Japanese white oak commons, plain sawn. (Italics ours.)

All claims in the protests are waived as to other grades of oak, including the combined grade of lumber known as firsts and seconds, except Nos. 1 and 2 lumber, plain sawn.

The paragraph under which duty was assessed reads:

169. Cedar commercially known as Spanish cedar, lignum-vitæ, lancewood, ebony, box, granadilla, mahogany, rosewood, and satinwood; all the foregoing when sawed into boards, planks, deals, or other forms, and not specially provided for in this section, and all cabinet woods not further manufactured than sawed, 10 per centum ad valorem; veneers of wood, 15 per centum ad valorem.

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And the pertinent provision in the paragraph under which free entry is claimed is as follows:

647. * * * sawed boards, planks, deals, and other lumber, not further manufactured than sawed, planed, and tongued and grooved; * * * all the foregoing not specially provided for in this section.

We have examined with care court decisions wherein the question of chief use was considered, notably Drakenfeld & Co. *v.* United States (2 Ct. Cust. Appls. 512; T. D. 32248), Downing & Co. *v.* United States (6 Ct. Cust. Appls. 447; T. D. 35984), and United States *v.* Snow's U. S. Sample Express Co. (8 Ct. Cust. Appls. 351; T. D. 37611), and are inclined to think these cases are easily distinguished.

Paragraph 169 provides for all sawn cabinet woods whether specifically mentioned therein or not, and it is no longer an open question as to whether Japanese white oak is a cabinet wood. It has been repeatedly held so to be by both the board and the Customs Court of Appeals—G. A. 7357 (T. D. 32454); G. A. 7682 (T. D. 35131); and Mitsui *v.* United States (7 Ct. Cust Appls. 307; T. D. 36870). This fact is also admitted in the stipulation, supra. It is doubtless true that while as a general proposition Japanese white oak is a cabinet wood, there may be Japanese oak trees or parts thereof that are not adaptable to cabinet uses, but that being so would not seem to bear upon the issue here presented.

The lumber in question is concededly boards, plain sawn, from Japanese white oak logs, and by the stipulation above set forth are admitted by protestants to be used to a substantial extent for cabinet purposes. It is also admitted by protestants in said stipulation that the No. 1 and No. 2 common lumber in issue is the same quality as the No. 1 and No. 2 common which is used for cabinet purposes. Under these admissions it would seem to be subversive of the letter and intent of the statute to hold that the Nos. 1 and 2 common boards are not cabinet wood, even though it were definitely shown by actual figures that all the Nos. 1 and 2 common lumber, plain sawn from Japanese white oak logs, imported as such, or reduced to that stage by sawing in the United States, were used for flooring. Even if chief use were to control we can not accept the statements of the witness Cornitius as satisfactorily establishing that the chief use of lumber *similar to this*, Nos. 1 and 2, is for flooring. He has been in the lumber business since 1913. He began as a salesman for Edward F. Niehaus & Co. Between one and two years later he went to Mitsui & Co. as salesman and remained with that firm three years. At the end of that period he engaged in business on his own account. His estimates as to uses are based wholly upon his own experience as a salesman, and as a dealer since 1918. He furnished no figures, either of the sales of Niehaus & Co., Mitsui & Co., or by himself to

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substantiate his statements. It is true that he was permitted to testify without objection and that his statements stand uncontradicted, but notwithstanding these facts it is unquestionably the function and duty of this tribunal to weigh such testimony of the witness and determine whether it is sufficient to establish chief use in any event. He assumed to testify as to the business of Mitsui & Co. before he entered the service of the firm, while he was in their employ, and since he left such employ. In the very nature of things he could not have been definitely advised as to exact details of that firm's business.

It is a notable fact that the firm of Mitsui & Co. made no attempt to prove chief use of this lumber from their own records; but even though they had and supported their own proof by that of manufacturers, dealers, and builders to show definitely that a larger quantity of these Nos. 1 and 2 common boards were used for flooring than for any other purpose, it would still be our view that what seems to have been the plain intent of Congress in framing paragraph 169, supra, could not be nullified by that fact.

A case in point which seems to support this view is United States *v.* Owen & Co. (4 Ct. Cust. Appls. 480; T. D. 33887). In that case the issue was whether Spanish-cedar strips or boards, intended for use in the manufacture of cigar boxes, were classifiable under paragraph 203 of the tariff act of 1909 as cabinet wood, or as sawed lumber not specially provided for under paragraph 201 of the same act. There was no dispute in that case that the Spanish-cedar strips or boards imported were especially prepared for use in the making of cigar boxes, and that 80 to 90 per cent of all Spanish cedar imported into the United States was used in the manufacture of cigar boxes. The board held, on the facts presented, that the assessment of duty should have been as claimed by the importers, but the court reversed the board, holding that the collector's classification of the cedar as cabinet wood had been correctly made. Judge Martin, writing for the court in that case, said:

> It is practically conceded in the record that 80 to 90 per cent of all Spanish cedar imported into this country is used in the manufacture of cigar boxes. The Government, however, produced testimony tending to prove that the residue is variously used in the veneering of furniture, in making file boxes, in ornamental finishings, and for like purposes.
>
> It can hardly be denied that the Government's testimony presents very strong proof of the existence for many years in the wholesale trade of this country of a definite, uniform, and general commercial usage of the term "cabinet woods" which included Spanish cedar, together with the other kinds of wood specified in paragraph 203. Upon the issue presented by the protest, as tried by the board, the burden was upon the importers to establish the fact that no such commercial designation existed.
>
> A review of the record, however, will disclose the fact that the importers did not produce any evidence at all upon the subject of commercial designation, excepting only the very vague and uncertain statement of witness Kirby S. Blauth.

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The importers, however, produced a number of witnesses who testified that Spanish cedar is too soft for use in the manufacture of furniture and like wares, and that it is not used for such purposes, but in the manufacture of cigar boxes. And upon this testimony, without meeting the issue of commercial designation at all, the importers really rested their case.

Upon the present record, therefore, the court is constrained to hold that the term "cabinet woods" commercially includes Spanish cedar, and that the board's finding to the contrary is unsustained by the evidence and should be reversed.

There is yet another view of the case which seems to be entitled to mention. In paragraph 203 Congress imposes duty upon certain sawed woods by name, to wit, cedar, lignum-vitæ, lancewood, ebony, box, granadilla, mahogany, rosewood, and satinwood, adding thereto the general description "and all other cabinet woods." If a restricted meaning be placed upon the term "cabinet woods," and if that term is thereupon allowed to dominate the paragraph, it will result in totally eliminating from the paragraph several of the woods which are specifically named therein.

* * * * * * *

It is conceded that the present importations are fitted and intended for use in the manufacture of cigar boxes, and it is contended by the importers that the boards in question are so sawed as to be unsuitable for cabinet use. *It is apparent, however, that under paragraph 203 the importation is dutiable according to the character of the wood, and not according to the purposes for which an individual importation may be intended or prepared.* (Italics ours.)

There is no question of commercial designation presented by the record. As already pointed out, the fact that Japanese white oak is a cabinet wood is stare decisis, admittedly so in protestant's stipulation, supra.

We do not overlook the fact that in Wheeler, Elder & Elder *v.* United States (11 Ct. Cust. Appls. —; T. D. 38752) the court reversed the board's decision (Abstract 43792) in so far as it covered item S–61, oak flooring. That conclusion was evidently based upon the collector's report in answer to the protest wherein he said: "I concede oak flooring, item S–61 is free."

With due deference to the court we feel constrained to hold that the collector's concession, involving as it does the construction of a statute, can not be accepted as controlling in a judicial proceeding.

Another reason why the court's conclusion as to item S–61, supra, should not control here is that it is conceded on the part of protestants that the No. 1 common, plain sawn, in the Wheeler case, supra, was not the same as the No. 1 common, plain sawn, in the case at bar.

On the whole record as presented we find—

(1) That the No. 1 and No. 2 white oak Japanese lumber in issue is cabinet wood.

(2) That it has not been proven that the chief use of such lumber by all users thereof in the aggregate is for flooring; and hold:

(*a*) That as a proposition of law it is immaterial to what extent such lumber is used for flooring, inasmuch as it is cabinet wood.

(*b*) That such lumber is cabinet wood not further manufactured than sawed within the meaning of paragraph 169, and therefore subject to duty as assessed.

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(T. D. 39108.)

Marking of imported books, printed matter, and lithographs.

Books imported into the United States to be marked on the cover or title-page.

TREASURY DEPARTMENT, *May 6, 1922.*

To Collectors and Other Officers of the Customs:

It is represented to the department that the requirements of paragraph F, Subsection I, Section IV, of the tariff act of 1913, are not strictly enforced at all ports with respect to the marking to indicate the country of origin of imported books, printed matter, and lithographs. It is claimed that such books are released when bearing a rubber-stamp impression intended to indicate the country of origin, which is easily erased after delivery, and when bearing the imprint on a fly leaf that is readily removed without damage to the book.

With a view to correcting any possible irregularities of this kind that may exist, you are instructed to exercise care to see that all books, printed matter, and lithographs are properly marked and to permit the release of imported books only when they are plainly marked in legible English words, so as to indicate the country of origin, such marking to appear either on the cover or title-page of each book.

ELMER DOVER, *Assistant Secretary.*

(T. D. 39109.)

Foreign currencies—Rates of exchange.

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), emergency tariff act of May 27, 1921.

TREASURY DEPARTMENT, *May 8, 1922.*

To Collectors of Customs and Others Concerned:

The appended table of the values of certain foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), act of May 27, 1921, during the period from April 28 to May 4, 1922, both inclusive, is published for the information of collectors of customs and others concerned.

(103912.) ELMER DOVER, *Assistant Secretary.*

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Values of foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), emergency tariff act of May 27, 1921.

PERIOD APRIL 28 TO MAY 4, 1922, INCLUSIVE.

Country.	Name of currency.	Apr. 28.	Apr. 29.	May 1.	May 2.	May 3.	May 4.
Europe:							
Austria	Krone	$0.000131	$0.000127	$0.000125	$0.000125	$0.000124	$0.000125
Belgium	Franc	.0843	.0842	.0846	.0844	.0838	.0836
Bulgaria	Lev	.006917	.006850	.0069	.006817	.006817	.006808
Czechoslovakia	Krone	.019406	.019389	.019422	.019486	.019422	.019417
Denmark	do	.2123	.2120	.2119	.2121	.2125	.2123
England	Pound sterling	4.4247	4.4255	4.4291	4.4326	4.4367	4.4399
Finland	Markka	.020538	.0201	.020475	.020675	.020675	.020788
France	Franc	.0917	.0918	.0922	.0920	.0915	.0915
Germany	Reichsmark	.003520	.003535	.003547	.003407	.003313	.003435
Greece	Drachma	.0448	.0449	.0449	.0449	.0449	.0448
Holland	Florin or guilder	.3812	.3816	.3822	.3834	.3835	.3834
Hungary	Krone	.001296	.001296	.001297	.001296	.001276	.001288
Italy	Lira	.0527	.0530	.0533	.0534	.0532	.0534
Norway	Krone	.1875	.1880	.1877	.1850	.1850	.1852
Poland	Polish mark	.000259	.00026	.000246	.000255	.000259	.000253
Portugal	Escudo	.0784	.0786	.0783	.0782	.0787	.0787
Rumania	Leu	.007075	.007078	.007069	.00705	.007025	.007028
Serbia	Dinar	.013557	.013443	.013529	.01415	.014407	.0144
Spain	Peseta	.1552	.1552	.1553	.1553	.1553	.1553
Sweden	Krona	.2594	.2594	.2590	.2584	.2588	.2590
Switzerland	Franc	.1945	.1943	.1939	.1938	.1936	.1929
Yugoslavia	Krone	.003367	.003341	.003392	.003522	.003610	.003603
Asia:							
China	Chefoo tael	.7917	.7917	.8000	.7983	.8000	.8083
Do	Hankow tael	.7917	.7917	.8000	.7983	.8000	.8083
Do	Shanghai tael	.7552	.7557	.7614	.7632	.7659	.7733
Do	Tientsin tael	.7958	.7958	.8050	.8033	.8050	.8125
Do	Hongkong dollar	.5582	.5586	.5588	.5646	.5655	.5679
Do	Mexican dollar	.5514	.5514	.5516	.5564	.5573	.5640
Do	Tientsin or Peiyang dollar.	.5717	.5692	.5692	.5725	.5729	.5825
Do	Yuan dollar	.5608	.5608	.5667	.5658	.5663	.5700
India	Rupee	.2784	.2787	.2794	.2789	.2800	.2803
Japan	Yen	.4733	.4741	.4738	.4737	.4742	.4736
Singapore (S. S.)	Dollar	.5058	.5033	.5008	.5017	.5017	.5033
North America:							
Canada	do	.983625	.984861	.984653	.984531	.983606	.983299
Cuba	Peso	.9980	.998438	.998375	.999001	.998875	.998813
Mexico	do	.492625	.4924	.492525	.4924	.49295	.492275
Newfoundland	Dollar	.981406	.9825	.982813	.982031	.98125	.980859
South America:							
Argentina	Peso (gold)	.8143	.8150	.8153	.8165	.8197	.8204
Brazil	Milreis	.1365	.1357	.1356	.1355	.1361	.1358
Uruguay	Peso	.7854	.7901	.7876	.7888	.7885	.7891

(T. D. 39110.)

Common carrier.

Approval of common carrier's bond.

TREASURY DEPARTMENT, *May 11, 1922.*

To Collectors of Customs and Others Concerned:

The common carrier's bond of the Ocean & Inland Transportation Co. (Inc.), No. 11 Moore Street, New York City, dated May 3, 1922, and approved, May 8 1922, has been filed in the office of the collector of customs at New York.

(110058.) EDWARD CLIFFORD, *Assistant Secretary.*

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(T. D. 39111.)

Glass articles—T. D. 39039 construed.

T. D. 39039 of March 16, 1922, not to be applied to glass such as described in paragraphs 85 to 90, act of 1913, which is suited to a variety of uses in its condition as imported.

TREASURY DEPARTMENT, *May 16, 1922.*

To Collectors of Customs and Others Concerned:

The department refers to its letter to the collector of customs at New York, T. D. 39039 of March 16, 1922, wherein he was directed to assess duty at the rate of 30 per cent ad valorem under paragraph 95 of the tariff act of October 3, 1913, upon "cylinder crown or window glass and plate glass cut to size such as 7 by 9 inches, 14 by 16 inches and the like, and glass cut or pressed in circular, oval, or other forms and of definite sizes intended to be used as imported without further manipulation."

The question has been presented to the department whether under the said instructions duty at the rate of 30 per cent ad valorem should be assessed upon cylinder crown and window glass and plate glass described in paragraphs 85 to 90 of the tariff act of 1913, imported in stock and other sizes, and suited in its condition as imported to a variety of uses.

You are advised that the rate of 30 per cent ad valorem under paragraph 95 should not be applied to cylinder crown and window glass and plate glass described in paragraphs 85 to 90, imported in stock and other sizes, and suited in its condition as imported to a variety of uses.

The provisions of T. D. 39039 should be construed as applying only to articles of glass imported for a specific use which are fitted for such use in their condition as imported without further processing or manipulation, and which are reasonably suited only for such specific use.

W. G. PLATT, *Acting Assistant Secretary.*

(T. D. 39112—G. A. 8531.)

Steel stands not parts of cream separators.

Certain steel stands, although constructed and designed to hold cream separators, are not necessarily classifiable as "parts" of the latter in the tariff sense, the use of the stands being purely optional and the absence thereof in no way affecting the integrity or efficiency of the separator, which is complete in every respect without the stand, and will perform all its functions if attached to any solid or rigid foundation of the necessary height. The stands were therefore properly excluded from classification under the provision in paragraph 441 of the act of 1913 for "cream separators * * * in whole or in parts." G. A. 7650 (T. D. 34998) cited and followed.

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United States General Appraisers, New York, May 9, 1922.

In the matter of protest 941421 of American Express Co. against the assessment of duty by the collector of customs at the port of San Francisco.

[Affirmed.]

Frank L. Lawrence (*Martin T. Baldwin* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence* and *Oscar Igstaedter*, special attorneys), for the United States.

Before Board 2 (FISCHER, HOWELL, and WELLER, General Appraisers).

FISCHER, General Appraiser: This protest covers certain steel stands or bases specially constructed and designed for holding and supporting cream separators. Duty was levied thereon at the rate of 20 per cent ad valorem under paragraph 167 of the act of 1913 as manufactures of metal not specially provided for. It is claimed by the importer that the stands are properly entitled to free entry under the provision in paragraph 441 of said act for "cream separators valued at not exceeding $75, * * * whether imported in whole or in parts, including repair parts."

The oral testimony introduced herein on behalf of the importer establishes (1) that the combined value of the stand and separator is less than $75, (2) that the stand is usually sold with the separator, and (3) that it has no commercial use apart from the separator. The United States examiner at the port of San Francisco, who passed this importation, testified that during the many years in which he served in said capacity he has from time to time passed upon importations of cream separators, but that the present shipment is the first he can recall in which stands or bases accompanied the separators; that while the invoice specifies 500 separators only 50 bases or stands accompanied same, and that he does not recall any previous or subsequent shipment containing the other 450 stands.

It is not denied that the cream separator without the stand is complete in every way and fully capable of performing all the functions for which it was constructed and designed. In fact, it would appear that the use of this specially constructed stand is entirely optional; that while it may be very convenient and desirable to use it, the absence of it in no respect interferes with the operation or general efficiency of the separator, if the latter is firmly attached to some solid and rigid foundation. In the circumstances, we can scarcely hold the stand to properly constitute part of the separator. At least, it is evidently not so regarded by the manufacturer, who, in his pamphlet entitled "Directions for use for the cream separator," which has been admitted in evidence herein, says, on page 7 thereof, under the heading "Erecting and oiling the separator":

Fix the separator at a height of about 2 feet on a wooden block in the ground or on a bench or table firmly attached to the floor. We also supply a special stand for this purpose.

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And on page 11 of said pamphlet, he says: "The separator should be set upon a good firm foundation and properly screwed onto the same." Nor can we find any mention of the stand in his printed list, on page 6, of "Machine parts and extras for the separator F2," although the list enumerates some 68 articles.

In other words, we can not find anything in this record upon which we can base a finding that these stands are properly classifiable for tariff purposes as parts of cream separators. To make such a finding would result in holding as matter of law that any specially constructed stand for any machine shall be deemed for tariff purposes to be a part of such machine. For example, a table or stand especially designed to hold a typewriter would be classifiable in the tariff sense as a part of a typewriter.

In his brief filed herein counsel for the importer cites a number of authorities in support of his alleged contention, but in almost every instance the question decided covered necessary parts of an entirety. There can be no such issue in this case, since, as before stated, there are in the present importation 500 separators and but 50 stands. Even if there were in the importation a stand for each separator, the provision invoked under paragraph 441 covering parts of cream separators would not apply unless it were shown that the stand was a necessary part of the separator, without which the latter would be incomplete. And that, of course, is not the fact. For instance, in the cited case on shuttles (Durbrow *v.* United States, 9 Ct. Cust. Appls. 177; T. D. 38001) the court held "that the importation is no part of an embroidery machine, but an essential sewing-machine part." Likewise, Landay *v.* United States (5 Ct. Cust. Appls. 498; T. D. 35151) on phonographic needles, wherein the court said:

> Whether equipped with records of one kind or another, a phonograph without a needle of some kind capable of being fitted to it and of following the cuts or undulations of the records would not serve the purpose for which it was made, and consequently could not be regarded as a complete machine. The needle is a *necessary* part of the reproducer; the reproducer is an indispensable and integral part of the phonograph, and from that it would seem to follow that the needle is an essential part of the machine and not a mere aid, auxiliary, or accessory which might be omitted without rendering the whole device unserviceable.

We believe the proper interpretation of the law to be that stated in our ruling in G. A. 7700 (T. D. 35223) covering bicycle accessories. In that case we said:

> On the uncontradicted testimony of the witnesses who appeared herein on behalf of the importers, and from an examination of the official samples in evidence, as well as upon the well-settled rule of statutory construction established by numerous rulings of this board and the courts in a long line of analogous cases to those now before us, to the effect that only essential parts of a denominated article, not mere accessories thereof, fall properly within a tariff provision for "parts of" such articles, we find that the lamps, pumps, pump clips, push bells, and tool bags here under consideration are not properly classifiable as parts of bicycles under said paragraph

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120; that they are rather accessories or adjuncts thereof, and as such dutiable either as manufactures of metal or of wire or according to the component of chief value in the respective articles under the appropriate provisions of the act.

This rule was applied in G. A. 7650 (T. D. 34998) covering camera tripods which were denied classification under a provision for cameras and parts thereof for the reason that the tripods were shown not to constitute essential parts of cameras, and that their use in connection with photographic work was more or less optional, the absence thereof in no way affecting the general efficiency of the camera, the latter being entirely complete without the tripod.

Inasmuch as the stands in question bear precisely the same relation to the cream separator as do tripods to cameras, we see no reason for making any change in the general rule of law applicable to such cases.

The protest is therefore overruled and the decision of the collector affirmed.

(T. D. 39113—G. A. 8532.)

Musical instruments and boxes in part of trimming.

FANCY BOXES IN PART OF TRIMMING—ENTIRETIES—TOYS—MUSICAL INSTRUMENTS.

Fancy boxes composed in chief value of lace trimming and containing a musical fitting consisting of a small wooden box in which is fastened a musical device so constructed as to automatically produce a succession of musical and harmonious sounds, and identical musical fittings separately packed and invoiced and covered by the same importations, are not entireties but are to be treated for tariff purposes as separate and distinct entities. *Held* that the articles are not toys, and that the fancy boxes are dutiable as articles in part of trimming at 60 per cent ad valorem under paragraph 358, tariff act of 1913, and that the musical fittings separately packed and invoiced are properly dutiable as musical instruments at the rate of 35 per cent ad valorem under paragraph 373 of said act. United States *v.* Schoverling (146 U. S. 76); United States *v.* Irwin (78 Fed. 799); In re Crowley (55 Fed. 283); Illfelder *v.* United States (1 Ct. Cust. Appls. 109; T. D. 31115); United States *v.* Sears, Roebuck & Co. (7 Ct. Cust. Appls. 60; T. D. 36388); United States *v.* Sears, Roebuck & Co. (9 Ct. Cust. Appls. 34; T. D. 37875); and Morimura Bros. *v.* United States (6 Ct. Cust. Appls. 475; T. D. 36119) cited and followed.

United States General Appraisers, New York, May 9, 1922.

In the matter of protest 938240 of Fontaine (Inc.), against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Walden & Webster (*Henry J. Webster* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Samuel Isenschmid*, special attorney), for the United States.

Before Board 2 (FISCHER, HOWELL, and WELLER, General Appraisers).

HOWELL, General Appraiser: In this case the appraiser reports that the merchandise in question "consists of music boxes com-

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posed of wood, trimmed with metal-thread lace and beads, and ornamented with dolls' heads; also the musical fittings for the same, invoiced and packed separately." It might be concluded from the wording of the appraiser's report that the musical fittings invoiced and packed separately were parts of the trimmed and ornamented boxes in the importations, but it appears from the testimony that such is not the case, and that each box, as imported, contained a musical fitting and that the fittings invoiced and packed separately were separate entities. The appraiser also reports that the component material of chief value in the completed article (box with musical fitting) is the lace-trimmed box, and he advisorily classified the merchandise as "articles in part of trimming" or articles "lace trimmed." On liquidating the entries the completed boxes with fittings, and the musical fittings separately packed and invoiced were treated by the collector as entireties, and were assessed for duty as articles in part of trimmings of whatever yarns, threads, or filaments composed at the rate of 60 per cent ad valorem under paragraph 358, tariff act of 1913.

The importers contend that the boxes and musical fittings are separate entities, and as such are properly dutiable as toys at the rate of 35 per cent ad valorem under paragraph 342 of said act, or as musical instruments at the same rate under paragraph 373 of said act. Other alternative claims are made in the protest, but for the purposes of this case it is not necessary to mention them.

A representative sample of the boxes in question was admitted in evidence, and consists of an ornamental or fancy round box measuring about 4 inches in height and 5 inches in diameter, and trimmed on the outside with metal-thread lace and on the inside with metal-thread lace and what appears to be a fabric of silk or of silk and cotton. A diminutive figure of a lady in a sitting posture and dressed in an evening costume of silk is attached to the cover of the box. Concealed inside the bottom of the box is a musical fitting or device, which consists of a small wooden box in which is fastened a musical device so constructed as to automatically produce a succession of musical and harmonious sounds.

It appears from the testimony of the importers' representative that all of the fancy boxes covered by the importations had one of these musical fittings attached and that the musical fittings which were separately invoiced and covered by the importations were not imported as detached parts of the fancy boxes but were imported, as the witness testified, "because we have boxes on hand that we want to attach them to," and also for the purpose of replacing any of the musical fittings which were attached to the fancy boxes and which might have become broken or rendered unfit for use. This testimony

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stands uncontradicted, and taken in connection with the samples is, in our opinion, sufficient to justify us in holding that the fancy boxes and the musical fittings separately invoiced are not entireties but are to be treated for tariff purposes as separate and distinct entities. The mere fact that the invoice description of these articles may tend to show that they are an entirety is not controlling, and will not prevent a separate classification when such classification is otherwise proper.—In re Crowley (55 Fed. 283). This brings us to the question of whether the separate articles are dutiable as toys or musical instruments, as claimed by the importers.

In defining what constitutes a toy, Judge Smith, speaking for the Court of Customs Appeals in Illfelder *v.* United States (1 Ct. Cust. Appls. 109; T. D. 31115), said:

> In common speech, and as popularly understood, a toy is essentially a plaything, something which is intended and designed for the amusement of children only, and which by its very nature and character is *reasonably* fitted for no other purpose. Although an article may be chiefly used for the amusement of children, if its nature and character are such that it is also reasonably fitted for the amusement of adults, or if it is reasonably capable of use for some practicable purpose other than the amusement of children, it can not be classed as a toy unless it is affirmatively shown by the importer that it is so known and designated by the trade generally.

The fancy boxes and the separate musical fittings here in question are clearly not dutiable as toys within this ruling of the court. They are not playthings for children, and there is no testimony that they are used as such. On the contrary, the testimony shows that the fancy boxes, which are made in part of musical fittings, are used as a receptacle for candies; but whether they are primarily adapted for that use we are not prepared to say. The construction of the boxes, and the materials with which they are lined, lead us to believe that the boxes are better adapted for use as ornaments or as receptacles for trinkets and small pieces of jewelry, rather than as candy boxes.

Nor are the fancy boxes musical instruments, even though they are made in part of musical fittings capable of producing a tune or a succession of musical and harmonious sounds. It is our opinion, however, that the musical fittings, when imported as separate and distinct entities, fall within the class of articles which the Court of Customs Appeals has held to be musical instruments. Note United States *v.* Sears, Roebuck & Co. (7 Ct. Cust. Appls. 60; T. D. 36388) and United States *v.* Ibid (9 Ct. Cust. Appls. 34; T. D. 37875).

While this construction is an apparent anomaly, it is nevertheless a well-settled principle of law that the classification of imported merchandise must be ascertained by an examination of the merchandise in the condition in which it is imported, and that when an article bearing a specific name becomes merged with or enters into

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the construction of another article having a different name and use it loses its original identity and becomes an inseparable part of the article of which it forms a part.—United States *v.* Schoverling (146 U. S. 76); United States *v.* Irwin (78 Fed. 799); and In re Crowley (supra).

Applying that principle to this case we find that the importations in question consist of fancy or ornamental boxes and musical instruments. The record shows that the component material of chief value in the completed boxes is the lace trimming. We hold that they are properly dutiable as articles in chief value of trimmings "of whatever yarns, threads, or filaments composed," under paragraph 358 of said act, as assessed, and that the musical instruments are properly dutiable at 35 per cent ad valorem under paragraph 373 of said act. Note Morimura Bros. *v.* United States (6 Ct. Cust. Appls. 475; T. D. 36119) as to the boxes in part of trimmings.

The protest is sustained to this extent. In all other respects it is overruled.

(T. D. 39114—G. A. 8533.)

Sufficiency of unsigned reappraisement appeal.

1. An appeal to reappraisement is sufficient to invoke the review given by the customs acts of the finding of value by the "local appraiser of the port" before the Board of General Appraisers which plainly earmarks on its face the importer from whom it comes, although unsigned by him. Such appeal should not be dismissed for lack of signature. The dicta in United States *v.* Loeb (7 Ct. Cust. Appls. 380; T. D. 36961) followed and accepted as controlling.

2. A legal instrument does not have to be signed at the bottom. The statement including the name of the importer in the body of the instrument may be treated as a signature, if in strictness a signature is required, which latter point is not decided.

United States General Appraisers, New York, May 9, 1922.

In the matter of reappraisements 7150-A, etc., of La Manna, Azema & Farnan.

[Motion to dismiss denied.]

Barnes, Chilvers & Halstead (*Albert McC. Barnes* of counsel) for the importers.

William W. Hoppin, Assistant Attorney General (*Pelham St. George Bissell*, special attorney), for the United States.

BROWN, G. A.: The Government moves to dismiss the appeals to reappraisement upon the ground that they are not signed. The motion is as follows:

Mr. BISSELL. If your Honor please, in these two cases the Government's position is that there is no matter before the court. I move to dismiss the appeals on the ground that they are not signed.

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The appeals read as follows:

Importer's Notice to Collector claiming Reappraisement.
United States Customs Service.
Collection District No.

Port of New York,
January 20, 1922.

Invoice No.
Entry No. 783071.
Sir:

As we consider the appraisement made by the United States Appraiser too high on QA New York—Sixty-nine cases Fish in Oil (Sardines) imported by La Manna, GB
Azema & Farnan in the Ital. S/S Citta di Messina from Lisbon, Portugal, we have to request that the same may be reappraised, pursuant to the law, with as little delay as your convenience will permit.

Respectfully,

.....
Importer's Address 397 Washington Street.

To .....
Collector of Customs.

Importer's Notice to Collector claiming Reappraisement.
United States Customs Service.
Collection District No.

Port of New York,
January 20, 1922.

Invoice No.
Entry No. B34743.
Sir:

As we consider the appraisement made by the United States Appraiser too high on HB New York—One Hundred & Twelve cases Fish in Oil (Sardines) imported by GB
La Manna, Azema & Farnan in the Dan. S/S "Albiston" from Lisbon, Portugal, we have to request that the same may be reappraised, pursuant to the law, with as little delay as your convenience will permit.

Respectfully,

.....
Importer's Address 397 Washington Street.

To .....
Collector of Customs.

In Adam's case, G. A. 2197 (T. D. 14233), decided July 16, 1907 (reiterated in Palme's case, G. A. 6644, 14 Treas. Dec. 36), Judge Somerville gave as one of his reasons for dismissing a protest because unsigned that—

It was not the duty of the collector, nor do we conceive it to be our duty, to go outside of the unsigned protest to ascertain by extrinsic evidence who is the responsible protestant.

In the case at bar, being a reappraisement, the collector has no such duty and it is perfectly plain to the board from the appeal itself whose appeal it is. It is clearly stated to be the appeal of

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La Manna, Azema & Farnan in the body of the instrument. No extrinsic evidence is required to earmark it as their appeal. It would be closing one's eyes to say it did not appear whose appeal it was.

In United States *v.* Loeb (7 Ct. Cust. Appls. 380; T. D. 36961), an appeal to reappraisement was in issue unsigned by the collector of customs although earmarked (as this is) as coming from him. The court declined jurisdiction of that case, but nevertheless made the statement—

> It would seem that in the present case the board of reappraisement failed to follow the laws and regulations governing appraisements, and that its failure has resulted in depriving the Government of a right to which it was entitled—

indicating clearly the court's view that the jurisdiction in reappraisements had been invoked either by the forwarding of the papers or by the unsigned appeal.

If an appeal unsigned by the collector, but earmarked as coming from him, is sufficient, clearly an appeal made by the importer also unsigned by him though earmarked as coming from him would likewise be sufficient.

There can be no presumption that a stranger or interloper would file an appeal to reappraisement to procure the refund of a deposit in which he was not pecuniarily interested. We must therefore presume that it is the appeal of the person from whom by the language of the instrument itself it purports to come.

A legal instrument does not have to be signed at the bottom of the paper. We are inclined to think no signature is required; the statute does not expressly say the appeal must be signed. But in any event the statement in the body of the instrument including the name of the importer may be treated as a signature.

The motion to dismiss the appeal in this case is therefore denied.

(T. D. 39115—G. A. 8534.)

Silk tassels—Ornaments—Cords and tassels.

Small silk tassels to the top of which is attached a supposedly narrow silk cord, but which the record shows consists in fact of silk braid made into the form of a loop measuring about 2¼ inches in length, and by which the tassels are suspended when attached to the article which they are intended to ornament, are not dutiable as cords and tassels even if the looped material were in fact made of cord, but are dutiable as silk tassels. In the absence of a specific provision for silk tassels, they are dutiable as silk ornaments at the rate of 60 per cent ad valorem under paragraph 358, tariff act of 1913. Willenborg *v.* United States (6 Ct. Cust. Appls. 451; T. D. 35985), which affirmed board's decision G. A. 7727 (T. D. 35418), cited and followed.

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United States General Appraisers, New York, May 12, 1922.

In the matter of protest 942888 of Wm. A. Brown against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Strauss & Hedges (*Jacob L. Klingaman* of counsel) for the importer.
William W. Hoppin, Assistant Attorney General (*Samuel Isenschmid* and *Samuel M. Richardson*, special attorneys), for the United States.

Before Board 2 (FISCHER, HOWELL, and WELLER, General Appraisers).

HOWELL, General Appraiser: The merchandise in question is described in the invoice as "tassels," which the appraiser reports consist of "small ornaments composed chiefly of silk cord, braid, metal thread, a pasteboard mold and beads." They were returned by the appraiser as ornaments in chief value of silk, and were assessed for duty by the collector at the rate of 60 per cent ad valorem under the provision in paragraph 358, tariff act of 1913, for "ornaments * * * of whatever yarns, threads, or filaments composed." The importers claim that the articles are properly dutiable as cords and tassels at the rate of 45 per cent ad valorem under paragraph 316, or at the rate of 25 per cent ad valorem under paragraph 262 of said act.

Counsel for the importers rely on the foregoing description of the merchandise to support their claim that the articles in controversy are cords and tassels, as they have failed to offer any evidence herein other than the special report of the appraiser and the official samples accompanying the same.

The articles are unquestionably constructed as tassels, but we are unable to discover from an examination of the samples admitted in evidence that they are constructed as cords and tassels or even made in part of silk cord, notwithstanding the fact that the appraiser reports that the articles are made in part of such material. The tassels before us are made of what we consider to be a tuft of silk threads measuring about 4 inches in length and bound with metal and silk threads to a pasteboard mold about 1 inch in length and one-half inch in diameter. Attached to the top of the tassels is a narrow silk braid made into the form of a loop about 2¼ inches in length, by which the tassels are suspended, and to the top of which a glass bead is fastened. That this loop is made of braid is confirmed by the appraiser when he states in his report that the articles are made in part of "braid," as the loop is the only discernible braid material which enters into the construction of the tassels.

We think that the material which the appraiser refers to in his special report as "silk cord" is what we consider to be the tuft of silk threads which form the tassels. If, however, we are in error in our assumption and the tassels are in fact made of a tuft of silk cords

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rather than a tuft of silk threads, that fact would not constitute the articles cords and tassels but merely tassels made of silk cords. We do not think, however, that the importers seriously contend that the tassels are made of a tuft of silk cords. It is our opinion that the material which they consider to be silk cord is the braided loop attached to the top of the tassels and by which the tassels are suspended when attached to the article which they are intended to ornament. This view is supported by the following statement of counsel for the importers as contained in their brief filed herein:

> The official samples show the articles to be cords and tassels in fact. This is confirmed by the report of the appraiser admitted in evidence, which states that they are composed in part of silk cord. From the classification it is apparent that silk was the component material of chief value, and the merchandise, therefore, falls squarely within par. 316. T. D. 35985, relied on by the appraiser, covered a different class of goods. The description, in the court's opinion, clearly shows that the cords in that case had been so manipulated as to lose their identity, and it was that fact which led the court to hold the goods to be tassels rather than cords and tassels.

The decision referred to by counsel (T. D. 35985, supra) was rendered by the Court of Customs Appeals in the case of Willenborg *v.* United States (6 Ct. Cust. Appls. 451; T. D. 35985), and affirmed board's decision, G. A. 7727 (T. D. 35418). The subject of controversy in that case was the dutiable status of certain silk tassels, the description of which, as given by the board and quoted by the court in its decision, is as follows:

> The articles in question are made of a number of loosely hanging silk threads which, in Exhibits 1, 6, and 7, are connected by a short piece of silk cord to a small circular ornament, which is also made in part of silk cord. The silk cord connecting the tuft of threads with the ornament is partly concealed by smaller ball-shaped ornaments, which are made from soutache braid or other material. This cord is made into a very small loop at the top of each tassel, by which the completed tassels may be attached to the article which they are intended to decorate or ornament. Exhibits 3 and 8, however, have no such loop at the top, but have a small lily-shaped ornament at the top of each tassel made from silk cord, the ornament being connected with the tuft of threads by a separate piece of cord, which is practically concealed by a small ornament made from cord or soutache braid.

From this description it will be observed that the tassels in that case were not only made in part of cord, but some of them were so constructed as to have a small loop of silk cord at the top of the tassel, by which the completed tassel could be attached to the article it was intended to decorate or ornament. A comparison of the samples in that case with the samples in evidence herein also shows that the "loosely hanging silk threads" which formed the tuft of the tassels there involved are similar to the silk threads which form the tuft of the tassels in the case at bar. These articles were held by the board and the court to be dutiable as tassels rather than as cords and tassels. In the course of the opinion, Judge De Vries, speaking for the court, said:

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This résumé of the construction placed upon the word "cords" for many years past in tariff administration and adjudication is that when a cord is so manipulated as to become an integral and essential part of another article used in the finishing and ornamenting of women's apparel, or any other similar use, it ceases to be a cord and becomes a part of another article. We think the underlying reason of those holdings sound and applicable. Cords have been used and form an integral part of these importations, but they have been so manipulated that they have ceased to be cords in the common acceptation of that term and have become parts of other finished articles of trade and commerce. How can it, therefore, be said that an article is within the description of cords and tassels when no part thereof, as imported, responds to the definition of a cord?

It is pertinent to remark in passing that the testimony in this record shows that there is no silk tassel, or ornament, or trimming of this kind known to trade and commerce which is not made in part of cords. If this be true, as we must assume it is, there would be no such thing known to trade and commerce as a silk tassel, but all articles responding to that call would be known as cords and tassels.

Illustrative exhibits have been offered in the case of what constitutes "cords and tassels." They are articles approximately a yard in length with a tassel on each end, the major portion thereof plainly being a silk cord. They are articles of utility as well as adornment and are used on or attached to wearing apparel for various purposes. While these may respond to some other tariff nomenclature, such as belts and beltings, they are, nevertheless, plainly within the terms cords and tassels. Finally, it may be said that these articles are precisely within the definition of the word "tassels" as found in the various dictionaries.

As we have already stated, the tassels in question do not appear to be made in part of cord, and, having in mind the interpretation of the court as to what constitutes cords and tassels, we are clearly of the opinion that even if the looped material which enters into the construction of the tassels were made of cord, that fact would not be sufficient to constitute the articles cords and tassels. In their condition as imported the articles are tassels and not cords and tassels. As silk tassels are not specifically provided for, we hold that the articles in question are properly dutiable as silk ornaments, as assessed.

The protest is overruled and the decision of the collector is affirmed.

(T. D. 39116.)

Foreign currencies—Rates of exchange.

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), emergency tariff act of May 27, 1921.

TREASURY DEPARTMENT, *May 17, 1922.*

To Collectors of Customs and Others Concerned:

The appended table of the values of certain foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), act of May 27, 1921, during the period from May 5 to May 11, 1922, both

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inclusive, is published for the information of collectors of customs and others concerned.

(103512.) EDWARD CLIFFORD, *Assistant Secretary.*

Values of foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), emergency tariff act of May 27, 1921.

PERIOD MAY 5 TO 11, 1922, INCLUSIVE.

Country.	Name of currency.	May 5.	May 6.	May 8.	May 9.	May 10.	May 11.
Europe:							
Austria	Krone	$0.000124	$0.000124	$0.000124	$0.000123	$0.000123	$0.000120
Belgium	Franc	.0839	.0837	.0829	.0829	.0836	.0834
Bulgaria	Lev	.006775	.006783	.006775	.006817	.0068	.006783
Czechoslovakia	Krone	.019394	.0193	.019211	.019114	.018908	.019078
Denmark	do	.2124	.2129	.2126	.2123	.2129	.2130
England	Pound sterling	4.4455	4.4463	4.4397	4.4422	4.4491	4.4474
Finland	Markka	.020794	.0209	.020963	.020875	.0208	.020813
France	Franc	.0917	.0916	.0909	.0910	.0914	.0914
Germany	Reichsmark	.003511	.00341	.003341	.003466	.003499	.003452
Greece	Drachma	.0449	.0449	.0449	.0435	.0423	.0421
Holland	Florin or guilder	.3837	.3837	.3939	.3843	.3846	.3854
Hungary	Krone	.001278	.001299	.001279	.001289	.001282	.001299
Italy	Lira	.0536	.0535	.0530	.0530	.0532	.0530
Norway	Krone	.1864	.1865	.1878	.1876	.1873	.1864
Poland	Polish mark	.000253	.00025	.00025	.000248	.000250	.000251
Portugal	Escuda	.0790	.0802	.0806	.0792	.0787	.0787
Rumania	Leu	.006956	.006969	.006953	.006959	.006959	.006953
Serbia	Dinar	.01445	.014729	.014671	.014771	.014686	.014621
Spain	Peseta	.1554	.1554	.1553	.1553	.1555	.1554
Sweden	Krona	.2589	.2584	.2573	.2575	.2575	.2563
Switzerland	Franc	.1932	.1932	.1931	.1929	.1929	.1930
Yugoslavia	Krone	.003607	.003675	.003664	.003697	.003669	.003654
Asia:							
China	Chefoo tael	.8083	.8067	.8125	.8083	.8150	.8100
Do	Hankow tael	.8083	.8067	.8125	.8083	.8150	.8100
Do	Shanghai tael	.7732	.7721	.7736	.7739	.7780	.7796
Do	Tientsin tael	.8133	.8117	.8175	.8142	.8208	.8150
Do	Hongkong dollar	.5713	.5670	.5670	.5687	.5695	.5703
Do	Mexican dollar	.5644	.5600	.5618	.5620	.5650	.5670
Do	Tientsin or Peiyang dollar.	.5783	.5750	.5796	.5767	.5858	.5850
Do	Yuan dollar	.5700	.5675	.5696	.5683	.5708	.5750
India	Rupee	.2813	.2821	.2834	.2855	.2887	.2881
Japan	Yen	.4733	.4731	.4728	.4728	.4733	.4729
Singapore (S. S.)	Dollar	.5058	.5042	.5058	.5050	.5075	.5117
North America:							
Canada	do	.983516	.984153	.983833	.985139	.985993	.986764
Cuba	Peso	.998563	.9980	.99775	.997875	.9980	.998375
Mexico	do	.491025	.491875	.4918	.492031	.49365	.492959
Newfoundland	Dollar	.98125	.981875	.981563	.983125	.984141	.984688
South America:							
Argentina	Peso (gold)	.8206	.8218	.8214	.8215	.8213	.8215
Brazil	Milreis	.1367	.1388	.1394	.1373	.1366	.1379
Uruguay	Peso	.7934	.7956	.7953	.7962	.7967	.7974

(T. D. 39117.)

Common carrier.

Approval of common carrier's bond.

TREASURY DEPARTMENT, *May 13, 1922.*

To Collectors of Customs and Others Concerned:

The common carrier's bond of the Denver & Rio Grande Western Railroad Co., Denver, Colo., dated August 1, 1921, and approved by the department May 10, 1922, has been filed with the collector of customs at Denver, Colo.

(53668.) EDWARD CLIFFORD, *Assistant Secretary.*

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(T. D. 39118.)

Permits—T. D. 38716 of May 31, 1921, amended.

To limit permits to import to six months from date of issue.

TREASURY DEPARTMENT, *May 16, 1922.*

To Collectors of Customs and Others Concerned:

T. D. 38716, of May 31, 1921, prescribing the regulations for the filing of applications and the obtaining of permits to enter and for the delivery from customs custody of the commodities and the classes of commodities referred to in the act of Congress approved May 27, 1921, as extended by the acts approved August 24, 1921, and November 16, 1921, is hereby amended as follows:

The term of validity of permits to enter and procure the delivery from customs custody of the commodities and classes of commodities referred to in section 501 (*a*) of the act of Congress approved May 27, 1921, as extended by the acts approved August 24, 1921, and November 16, 1921, shall be limited in each case to a period of six months next succeeding date of issue.

No controlled commodities may be delivered from customs custody under any permit whose term of validity has so expired unless the licensee in any such case has applied for and has obtained from the department an extension of the period of validity of any particular permit or unless the importer or his agent in any case has applied for and has obtained from the department a new permit.

It is provided, however, that in so far as this decision relates to outstanding permits, it becomes effective 30 days after the date upon which it is promulgated.

EDWARD CLIFFORD, *Assistant Secretary.*

(T. D. 39119.)

Antidumping act, 1921—Finding by the Secretary of the Treasury.

The Secretary of the Treasury makes finding under section 201 (*a*), antidumping act, 1921, of dumping in the case of high pressure tube gauge glasses from England.

TREASURY DEPARTMENT, *May 19, 1922.*

To Collectors of Customs and Others Concerned:

Section 201 (*a*) of the antidumping act, 1921, provides as follows:

SEC. 201. (*a*) That whenever the Secretary of the Treasury (hereinafter in this act called the "Secretary"), after such investigation as he deems necessary, finds that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation into the United States of a class or kind of foreign merchandise, and that merchandise of such class or kind is being sold or is likely to be sold in the United States or elsewhere at less than its fair value, then he shall make such finding public to the extent he deems necessary, together with a description of the class or kind of merchandise to which it applies in such detail as may be necessary for the guidance of the appraising officers.

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After due investigation I find that the industry of making high pressure tube gauge glasses in the United States is being or is likely to be injured by reason of the importation into the United States of high pressure tube gauge glasses from England and that such merchandise is sold or is likely to be sold in the United States at less than its fair value.

(106085.) EDWARD CLIFFORD, *Assistant Secretary.*

(T. D. 39120.)

Classification of papier-mâché candy boxes.

Appeal directed from the decision of the Board of United States General Appraisers, dated April 20, 1922 (Abstract 44900), holding certain papier-mâché candy boxes dutiable at the rate of 25 per cent ad valorem under paragraph 369 of the act of 1913.

TREASURY DEPARTMENT, *May 19, 1922.*

SIR: The department is in receipt of your letter of the 12th instant, inviting attention to a decision of the Board of United States General Appraisers, dated April 20, 1922 (Abstract 44900), wherein the board held that certain papier-mâché candy boxes, which had been classified as dutiable at the rate of 60 per cent ad valorem under paragraph 347 of the tariff act of October 3, 1913, were dutiable at the rate of 25 per cent ad valorem under paragraph 369 of the said act.

In accordance with your recommendation you are hereby requested to file, in the name of the Secretary of the Treasury, an application with the United States Court of Customs Appeals for a review of the said decision in conformity with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully,

(110076.) EDWARD CLIFFORD,
Assistant Secretary.

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 39121.)

Appraisers' returns.

Amendment of T. D. 37889 of January 27, 1919.

TREASURY DEPARTMENT, *May 20, 1922.*

To Appraisers of Merchandise and Others Concerned:

Attention is invited to T. D. 37889, second paragraph, under "Summary sheet and invoice returns," which is amended to read as follows:

The entered rates and appropriate paragraphs should be noted, by the importer, in black ink on the left hand margin of the invoice.

(107222.) EDWARD CLIFFORD, *Assistant Secretary.*

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(T. D. 39122.)

Form abolished.

Abolition of Customs Form 5909—"Daily report of personnel and operations (outside force)."

TREASURY DEPARTMENT, *May 23, 1922.*

To Collectors of Customs and Other Officers:

On investigation by the department it is found that Customs Form 5909, "Daily report of personnel and operations (outside force)," is not necessary, and the form is hereby abolished.

(93120-5909.) EDWARD CLIFFORD, *Assistant Secretary.*

(T. D. 39123—G. A. 8535.)

Vegetables, Chinese—Sufficiency of protests.

1. Under the evidence in this case wai san, yook juk, and sar sum, Chinese vegetable substances, are held to be drugs under paragraph 27, act of 1913; and fungi and lichens are held to be vegetables in their natural state under paragraph 215 of the same act.

2. A protest signed by an attorney or by a person who is a stranger to the protest, neither being otherwise connected in any way to the protest, is held to be insufficient under paragraph N, Section III, act of 1913, which provides that the "owner, importer, consignee, or agent of such merchandise * * * shall * * * file a protest."

VALIDITY OF SIGNATURE OF PRINCIPAL OR CLIENT BY AGENT OR ATTORNEY AT LAW.

3. ADAMSON, G. A., dissenting, holds no law requires power of attorney authorizing agent or attorney to sign name of principal to protest.

4. R. C. Robinson signed principal's name by himself to one protest and F. L. Lawrence, a member of the bar of this court, signed his client's name by F. L. Lawrence, attorney, to the other. In both cases the importers appeared by F. L. Lawrence, counsel, introduced testimony, and tried the cases on the hearing, and both sides filed briefs before the board, and at no time was the validity of the signatures to the protests ever brought in question nor importers called on to repudiate or support the validity of the signatures. The protests should not be dismissed.

United States General Appraisers, New York, May 16, 1922.

In the matter of protests 936023, etc., of Yee Chong Lung & Co. et al. against the assessment of duty by the collector of customs at the port of San Francisco.

[Protests dismissed.]

Frank L. Lawrence for the importer.

William W. Hoppin, Assistant Attorney General (*Samuel Isenschmid*, special attorney), for the United States.

Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers; ADAMSON, G. A., dissenting).

Protest 936023.

WAITE, General Appraiser: The importations in these cases are from China and are described as wai san, yook juk, sar sum, and fungi

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and lichens. The wai san, yook juk, and sar sum were classified for duty purposes as prepared vegetables under paragraph 200 of the law of 1913, at 25 per cent ad valorem, and the fungi and lichens as vegetables in their natural state under paragraph 215 of the same law, at 15 per cent ad valorem. The importers contend that the wai san, yook juk, and sar sum are dutiable at 10 per cent ad valorem under the provisions of paragraph 27 as drugs, and that the fungi and lichens are free under paragraph 552, the only law involved being the law of 1913. The wai san, yook juk, and sar sum have been imported heretofore and have been passed upon by the board and held to be vegetables. See Abstract 21139, affirmed by the United States Circuit Court, Southern District of New York, in Wing On Wo *v.* United States (175 Fed. 891; T. D. 30150) [act of 1897] and Abstract 23972 (T. D. 30934) [act of 1909]. Each case, however, must stand upon its own record. In the cited cases the testimony revealed the fact that they were used as vegetables; that is, as food to be eaten at the table in the same way that the ordinary garden vegetables are used. In this case, however, there seems to be no testimony of their use in any other way than for medicinal purposes or as drugs.

The importer produced three witnesses who appear to have had long experience in the handling of these commodities. One was a druggist, one a physician, and the other described himself as a "drugstore saleman." Their testimony was to the effect that these commodities are drugs, that they are never used as a food, but are frequently prescribed as medicine to be included in the food with which they are cooked and eaten.

The only witness produced on the part of the Government was an examiner, who gave no testimony with reference to their use as vegetables, neither did he show that they were ever used as food the same as other vegetables, so called, are used.

The assessment would be warranted only by the fact that they are made use of in culinary departments in the same way that other garden vegetables are used. The record is entirely lacking in proof upon that point. Were this the only question in the case we would hold that the protest should be sustained as to the wai san, yook juk, and sar sum.

In the case of the fungi and lichens it appears that evidence was not produced either as to what they are or how they are used. Reliance in that direction seems to be placed upon the report of the appraiser, which is as follows:

> The fungus and lichen in cases #201 and #202 are edible vegetable growths. They are not mushrooms and, being edible vegetables in the natural state, are dutiable as returned by this office.

This statement seems to stand undisputed except from the citations and remarks of the attorney for the importer in his brief,

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wherein he reasons from analogy and by comparison, citing the decisions of the court upon alleged similar substances, that their classification should be under paragraph 552 of the law of 1913, which provides for the following:

Moss, seaweeds, and vegetable substances, crude or unmanufactured, not otherwise specially provided for in this section.

The report of the appraiser seems to establish the fact that they are vegetables and are used as vegetables, meaning they are used as edible vegetables or in the same way as the ordinary garden vegetable is used. Dictionary definitions and pure food regulations are cited in the brief for importers, as, for instance, under the pure food regulations we find vegetables defined as—

The succulent, clean, sound, edible parts of herbaceous plants used for culinary purposes.

The Standard Dictionary defines vegetables as—

1. A part or the whole of a *herb* used chiefly for culinary purposes, but also frequently for feeding domestic animals.

The Century Dictionary says:

2. In a more limited sense, a herbaceous plant used wholly or in part for culinary purposes, or for feeding cattle, sheep, or other animals, as cabbage, cauliflower, turnips, potatoes, spinach, peas, and beans.

All of these definitions and many others found in the brief for importers are entirely consistent with the report of the appraiser that they are vegetables.

We understand it is contended that vegetables—meaning edible vegetables—are such only as are grown in the garden and enumerated in the decisions. We do not, however, think the decisions go to the extent of confining the term vegetable as used in the tariff act to the class of vegetables enumerated in the decisions. A late, if not the latest expression upon this point is found in United States *v.* Wallace (4 Ct. Cust. Appls. 142; T. D. 33413). Judge Martin at page 143, after reviewing the decisions, said:

The foregoing decisions indicate that in the tariff acts the word "vegetables" has not been employed in a strictly botanical sense, but rather has been applied to those articles of food which constitute in common acceptation the vegetable part of a repast. These are such articles of food as commonly grow in kitchen gardens.

We do not understand this to mean that they are only such as grow in kitchen gardens, but they are, as expressed there, "such" being similar or like them, in their use principally.

We are bound to interpret the report of the appraiser as meaning these are edible, that they are used as a part of the food which goes to make up the meal consisting of vegetables, meats, and condiments. We think in this case we are bound to assume that the report of the appraiser is correct as establishing the fact that they are vegetables, as it stands undisputed and unchallenged in the testi-

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mony. We are therefore of the opinion that the fungi and lichens should be assessed as vegetables in their natural state, in accordance with the assessment made by the collector. As to those items, therefore, we should be inclined to overrule the protest.

Protest 936051.

This protest covers only the merchandise known as wai san, and if there were no other question involved we would hold that the claim of the importer should be sustained.

There is, however, involved in both the protests a question as to the sufficiency of the protests. Paragraph N, act of 1913, the statute in force at the time of the filing of the protests, so far as pertinent, reads as follows:

> N. That the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise, * * * shall be final and conclusive against all persons interested therein, unless the owner, importer, consignee, or agent of such merchandise * * * shall, * * * file a protest or protests in writing with the collector, etc.

Congress has seen fit to specifically provide who may file a protest, to wit, "the owner, importer, consignee, or agent of the merchandise." Our construction of this clause is that the owner, importer, or consignee of the merchandise may file a protest, or it may be filed by the agent of any of them. It certainly can not be presumed in the absence of proof that the parties signing in the case at bar are the agents. It is a familiar principle of the law of agency that agency can not be presumed. If these protests are in accordance with the law, anyone could make himself "agent" by signing the name of either the owner, importer, or consignee.

Protest 936023 is signed with the importer's name in typewriting, "By F. L. Lawrence, Atty." Protest 936051 is signed as follows: "Chan Ning Tong & Co. By R. C. Robinson." The collector reports in each case that "There is no power of attorney on file in the customhouse in San Francisco authorizing" the persons named to sign for these importers.

We are therefore of the opinion that the protests are insufficient under the statute, there having been no proof given at the hearing that the persons who signed the protests sustained the relation to the parties or merchandise mentioned in the statute. The protests are therefore dismissed.

DISSENTING OPINION.

ADAMSON, General Appraiser: I respectfully dissent from the decision of the majority of the board dismissing the protests.

The majority correctly states that each protest was signed with the name of the importer, one "By F. L. Lawrence, Atty." and the other "By R. C. Robinson."

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I have been unable to find any law making a power of attorney requisite to authorize an agent or attorney to file a protest for a principal or client. If any kind of writing were necessary, it might be lawfully filed in any other customhouse than San Francisco. Nor would it be invalid if not filed at all, if the collector impliedly waives its production by recognizing the relationship and transacts the business in hand.

In cases of uncertainty a prudent collector would no doubt ask for authority, but, in the case at bar, that would not be necessary. While we do not personally know R. C. Robinson, the collector must have known him, but we do know judicially F. L. Lawrence as a regular practitioner before this board, as well as an accredited lawyer in good standing in general practice. It is also judicially known to us that F. L. Lawrence is likewise known to the collector in the city where both live and transact their business.

F. L. Lawrence, after signing his client's name "By F. L. Lawrence, Atty." to one of the protests, appeared before the board in both cases as counsel. Both of the importers appeared in the hearing, through their counsel F. L. Lawrence, and litigated the cases. Both sides filed voluminous briefs. But neither on the trial nor in the briefs was any point, suggestion, or objection made to the protests, nor did either importer ever repudiate the action of the agent or attorney, nor did the collector object or hesitate to accept the duties, the fee for the filing of the protests, or the protests themselves, nor does it appear that the matter of authority was ever mentioned except the collector, in referring the protests to this board, stated that no power of attorney had been filed.

The collector regarded the agent and attorney as authorized and the importers recognized and ratified their action and litigated the cases. Counsel on both sides recognized the protests as good. They were never questioned nor repudiated anywhere nor were importers ever called on to repudiate or prove the authority to file protests, and they should not be dismissed. See Bodart *v.* Schell et al. (33 Fed. 825) and In re L. & E. Stirn, G. A. 8173 (34 Treas. Dec. 474; T. D. 37658).

In cases where protests have been dismissed as unauthorized or set aside on the ground of faulty action in filing, the agent has signed his own name only, or a wrong name, and not the name of the principal (as in these cases), so it was not the principal's act but the act of the agent, and, in those cases, the question was raised in time, and opportunity given to prove authority.

In some cases, however, even where a wrong name was signed as principal, proof was admitted showing that the protest was filed for the principal by the agent, although signed with the wrong name, and in those cases the validity was sustained.—In re Frankenberg (8

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Treas. Dec. 90, Abst. 2241); In re Snow's Express Co. (34 Treas. Dec. 649, Abst. 41899); In re Trippe, Barker & Co. (31 Treas. Dec. 522, Abst. 40428); American Express Co., G. A. 8168 (34 Treas. Dec. 395; T. D. 37623).

The majority of the protests coming before us for determination are filed by the attorneys who write the principal's name "by attorney" (as in this case) and many of them sign both with typewriter, yet the majority of this board have not seen proper to dismiss them nor has the Government counsel seen proper to make any motion in that direction.

There is a regulation of the Secretary of the Treasury (art. 221) that a power of attorney may be executed for the transaction of a specified part or all of the customhouse business of the principal, but that does not prohibit an attorney or agent from filing a plea. The burden was not on the importer to prove the agency. He could repudiate it if he desired at the beginning of the hearing, or, if the Government could show an interest in setting aside the filing as invalid, the Government could have been heard at the outset of the hearing. But, without attack by somebody, it was not necessary to prove the fact of agency or attorneyship. Agency may be assumed from the act performed, and, if ratified by acquiescence therein, as in the case at bar, the relationship stands beyond all question.

I consider it erroneous for the board, after a long and voluminous hearing, with protests recognized by both parties, no question made by them anywhere, after the board has written a long opinion discussing the facts, to conclude by dismissing the protests on its own motion as the board proposes to do in these cases.

(T. D. 39124—G. A. 8536.)

Reliquidation—Additional duty.

The assessment of additional duty under paragraph I, section 3, tariff act of 1913, when the appraised value exceeds the entered value devolves upon the collector by express provision of statute, and is not part of his duty in classifying merchandise. His action was held valid where he reliquidated in accordance with the judgment order of the Board of General Appraisers and also assessed additional duty.

United States General Appraisers, New York, May 8, 1922.

In the matter of protests 942586, etc., of Mecke & Co. et al. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Comstock & Washburn (*George J. Puckhafer* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Marcus Higginbotham, jr.*, special attorney), for the United States.

Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers).

HAY, General Appraiser: These protests challenge the validity of the action of the collector in the reliquidation of duties in pursuance

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to the judgment orders of the Board of General Appraisers and the order of the Court of Customs Appeals affirming the same.

The records covered by this case were at prior dates before this board upon a question of classification, the merchandise involved being certain gums which had been assessed for duty at 15 cents per pound under paragraph 36 of the act of 1913. The original protests were sustained in part and the collector directed to reliquidate the entries assessing duty upon the gum at 10 per cent ad valorem under paragraph 385. Upon appeal the Court of Customs Appeals in 11 Ct. Cust. Appls. —; T. D. 38689, affirmed the action of the board, and final judgment order was issued. In accordance therewith the collector reliquidated the entries assessing duty on the gum at 10 per cent under paragraph 385. An advance over the entered value having been made by the appraiser and no appeal to reappraisement having been taken by the importers, the collector also assessed additional duties in accordance with the provisions of paragraph I of section 3.

It is upon this latter ground that the protests attack the validity of the reliquidation. The protests read in part:

> It is claimed that you have not followed the final judicial order in the reliquidation of this entry in that you have assessed certain additional duties not provided in the judicial order for reliquidation.
>
> The final judical order required you to reliquidate the entry as to certain gums and assess a duty thereon at 10 per cent ad valorem, no more and no less. Any variance from such judical order is without warrant or authority in law.

We find no claim in the protests and no contention by counsel that the collector did not in obedience to this order assess duty at 10 per cent ad valorem. This, it seems to us, is a complete compliance with the judgment of the board. The question of the value upon which that duty should be assessed was not before the board, and the appraised value having exceeded the entered value that provision of paragraph I of section 3 invoked by the collector applied automatically. This is not a part of his duty in classifying the merchandise, as in so classifying it he literally followed the decision of the board; but this assessment of additional duty devolves upon him by express provision of statute.

The protests are overruled.

(T. D. 39125.)

Drawings— Works of art—Articles of utility.

TOWER & SONS *v.* UNITED STATES (No. 2128).

WATER-COLORED STYLE CARDS.

The merchandise is water-color representations on cardboard of women and girls wearing certain styles of garments and of certain styles of women's and children's garments. For the most part the human figures have landscape backgrounds.

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These pictures are designed to be used for making cuts to be used in catalogues for the purpose of advertising the garments depicted. Some are water-colored photographs. Some have pasted on them small pieces of the fabric advertised. They are shown to be the result of the combined efforts of a number of different artists working independently. The figures are conventional and the pictures appear rather crude and mechanical. The decision of the Board of United States General Appraisers overruling a protest claiming free entry as "original drawings and sketches in pen and ink or pencil and water colors," under paragraph 652, tariff act of 1913, against their assessment as manufactures of paper, under paragraph 332, is affirmed.

United States Court of Customs Appeals, May 9, 1922.

APPEAL from Board of United States General Appraisers, T. D. 38792 (G. A. 8454).

[Affirmed.]

Finkler & McEntire for appellants.

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence* and *Pelham St. George Bissell*, special attorneys, of counsel), for the United States.

[Oral argument April 26, 1922, by Mr. Lawrence.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

BARBER, Judge, delivered the opinion of the court:

Two importations are involved in this case. The invoice accompanying one described the merchandise as color drawings for catalogues, and the entry described it as original water-color paintings. As to the other it is described in both the invoice and the entry papers as pencil and water-color drawings.

All the merchandise was assessed as manufactures of paper under paragraph 332 of the tariff act of 1913. Free entry was claimed in the protests under paragraph 652 of the same act as original drawings and sketches in pen and ink or pencil and water colors. An alternative claim was made under paragraph 376. That claim is not urged in this court.

All the testimony heard by the Board of General Appraisers was given by one witness on behalf of the importers. It was, however, claimed by the importers and conceded by the Government that two other witnesses, if called, would testify substantially the same, and the case was disposed of with that understanding.

We can do no better in presenting the issues in this case than to quote liberally from the opinion of the board written by Judge Waite. Therein it is said—

Samples of the importation were presented at the hearing and appear to be water-color paintings on cardboard, the pictures themselves being about 18 by 20 inches in size, with figures of women and girls and of women's and children's garments, in some cases on the figure. The articles sought to be advertised by these pictures are for the most part represented as being on figures superimposed upon a landscape wherein are depicted lawns, flowers, walks, fences, walls, trees, sky, and various buildings in the background.

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We have to resort to our general knowledge of how such pictures are made to assume that there is any pencil or pen work in the pictures. Some of them, we are advised, were made by photographing the objects, after which the photographs were colored with water colors. Most, if not all, the exhibits before us are the result of the combined efforts of various people. The witness for the importer describes the method of making these pictures as follows:

In the first place a square is drawn in proportion to our catalogue pages. (This we understand to be a purely mechanical operation.) Then that is given to an artist who is called the layout artist. He sketches the bodies of the figures in pencil; then that is given to a head artist who does the head, hands, and feet in color. After that it is given to a sketch artist who sketches the merchandise on the figures, the dresses, coats, whatever they happen to be. After that it is given to a wash artist who puts the color on the garments. It next passes into a detail artist's hands who puts the cloth effects or serges and checks, the buttons, etc. It next passes into an artist's hands who puts in the backgrounds in between here. That completes the drawing.

We understand the expression "the backgrounds in between here" to mean all the picture exclusive of the figures and representations of garments—the landscape and buildings.

We are not unmindful of the fact that what is described as "similar merchandise" has been passed upon by the Court of Customs Appeals, but it is not present for comparison. In our judgment each picture of this nature must be passed upon separately and depends for its classification upon various qualities, such as the skill displayed, its originality, whether it is a sketch or a painting, and finally, whether it is a work of art.

The testimony shows that whatever are represented in these designs as garments, such as skirts and waists, are actually before the one producing them or transferring them to the card. There is nothing original in the conception or production of the pictures. If there is any originality displayed at all, and upon that point we are not informed, it is in the picture itself, landscape, sky, trees, etc., which appear as a material and important part of the production.

There is no variety in the faces, except perhaps a variety of pose. They are from the same pattern, a marked similarity running through them all. Probably two patterns, one for the children and one for the adults, would be sufficient from which any ordinary draftsman with mechanical skill could produce every face represented. The only change of expression in the faces seems to be caused by either opening or closing the lips. The paint is put on the features roughly.

This merchandise is imported for the purpose of mail-order advertising. The pictures are reduced in size and transferred to plates, from which are printed similar pictures for the catalogues of the mail-order house. In this instance they are all for the one house. When the catalogue has been published the pictures are of no further use either as works of art or as a commercial commodity.

When Congress provided for the free entry of water-color paintings exclusive of those having an utilitarian purpose, and at the same time provided for sketches and drawings also free of duty, it must be assumed that they desired to encourage the production of artistic objects and pictures. We must assume that they used the terms in the ordinary sense; that a sketch and drawing should respond to the ordinary dictionary definitions; that a painting is a picture made by the application of colors, water or oil, by means of a brush, with the idea of producing something artistic. But they did not have in mind the representation of a silk petticoat, a red hat jauntily worn or a lock of hair fetchingly arranged, as a work of art. And certainly when such representations are made to all appearances by the application of water-color paints Congress did not intend they should be classified as drawings and sketches, having drawn a distinct line of demarcation between water color paintings and drawings and sketches.

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The avowed purpose for which these pictures are produced is utilitarian—for advertising only. The pictures are in no way original. There is nothing in them that could not be produced by a novice in art from patterns or copies, given a reasonable amount of elemental training in drawing. It is true these are more pleasing, perhaps, than if other subjects were selected, but there is no more reason why they should be called works of art and original productions by artists than if they were representations of plows, harrows, mowing machines, wagons, threshing machines, and the like. If we were to hold these pictures free of duty under paragraph 652 we would in our judgment depart far from the design and intent of Congress when it enacted this rather exclusive and specific provision. If they are to be admitted free as paintings it must be because they are works of art and are original conceptions of the artist, and not imported for use in connection with any utilitarian purpose. If they are sketches or drawings and free of duty because the utilitarian clause does not apply to them, they should at least have merit as works of art and should be original.

In addition to this we note that the witness also testified, in answer to a question by Judge Waite, that the reason the exhibits pass through so many hands was "owing to the fact that one man doing just one part becomes very proficient both in speed and practice," and further, that some of the imported cardboard pictures contain small swatches or pieces of the material, typical of the garment, which were "stuck down" on the figures on the cardboard. It also appeared that the witness, Mr. Ecclestone, was one of the witnesses in the case of MacLoughlin *v.* United States, hereinafter referred to, and in the instant case he testified that the samples here "are the same character of work as in that case," but he did not say, and we are not advised, which of the samples now before us, if any, are substantially identical in manner of production with those in that case. It will later herein appear that three of the five typical exhibits there were denied free entry. Neither the exhibits in the Colortype Co. case, also hereinafter referred to, nor the exhibits in the MacLoughlin case are now before us.

There are before us eight cardboard sheets conceded to be typical of some of the merchandise, and an illustrative exhibit which shows pages of catalogues upon which appear printed pictures in reduced size illustrating the use to which the sample exhibits, or those similar thereto, are put.

From what we have quoted from the opinion of the board it is plain that it found the merchandise as represented by the exhibits was not original sketches or drawings.

The board also held that the importations were not works of art and therefore not within the provisions of paragraph 376, but as the question of classification under that paragraph is not raised by this appeal it is unnecessary of consideration here.

The appellants in effect rely upon the authority of American Colortype Co. *v.* United States (9 Ct. Cust. Appls. 212; T. D. 38046) and MacLoughlin *v.* United States (10 Ct. Cust. Appls. 37; T. D. 38261), urging in substance that, although the board has found

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that the drawings or sketches here are not originals, such finding is contrary to law upon the evidence and against the rule of the cited cases.

We insert here paragraph 652:

Original paintings in oil, mineral, water, or other colors, pastels, original drawings and sketches in pen and ink or pencil and water colors, artists' proof etchings unbound, and engravings and woodcuts unbound, original sculptures or statuary, including not more than two replicas or reproductions of the same; but the terms "sculpture" and "statuary" as used in this paragraph shall be understood to include professional productions of sculptors only, whether in round or in relief, in bronze, marble, stone, terra cotta, ivory, wood, or metal, or whether cut, carved, or otherwise wrought by hand from the solid block or mass of marble, stone, or alabaster, or from metal, or cast in bronze, or other metal or substance, or from wax or plaster, made as the professional productions of sculptors only; and the words "painting" and "sculpture" and "statuary" as used in this paragraph shall not be understood to include any articles of utility, nor such as are made wholly or in part by stenciling or any other mechanical process; and the words "etchings," "engravings," and "woodcuts" as used in this paragraph shall be understood to include only such as are printed by hand from plates or blocks etched or engraved with hand tools and not such as are printed from plates or blocks etched or engraved by photochemical or other mechanical processes.

It becomes necessary to review to some extent the cases relied upon by the importers, and in so doing we refer to the evidence of record therein.

In the opinion in the Colortype Co. case it was said that the testimony was meager, but established the fact that the pictures were produced by artists who worked with the assistance or under the direction of a master artist, and that the pictures were first drawn or sketched upon paper in pen and ink or pencil and then colored in water colors.

The record in that case shows that there was only one sample exhibit and only one witness who testified as to its character and the method of producing it. He said he was an experienced artist engaged in supervising art work; that he had done work like the exhibit; that it was an original water color drawing; that in technique, coloring, lights, shades, and details it conformed to artists' rules and was in his opinion a work of art. He did not testify as to the number of artists who participated in producing any one such drawing or the part each took therein, but his uncontradicted testimony left the impression, and justified the conclusion, that such work was the product of the genius of one artist who supervised the work and was only aided in its production by others who attended to some of the details.

In view of this explicit uncontradicted testimony of an apparently competent witness, it was held the importation was entitled to free entry under paragraph 652.

In the MacLoughlin case the witness Ecclestone testified that he was art superintendent of a concern in Canada; had for twelve years

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done work as an artist and was familiar therewith. He was shown the five exhibits in that case; testified that they were water-color drawings first outlined with pencil and then filled in with water color and used for the same purposes as shown by the record in the present case. He described the method of producing them substantially as it is described in the record here. Such productions were, he said, "turned out by six or eight artists as a mechanical process." His testimony was corroborated by other witnesses.

The testimony and the exhibits we held established that the merchandise should be divided into two classes, the first class being represented by two exhibits like the exhibit in the Colortype Co. case, and the second by three, which were different therefrom in that on each exhibit something had been pasted, either a piece of fabric or a piece of paper or a cut containing a picture, drawing, or painting. As to the cards of the first class the Government conceded they were quite similar to the merchandise of the Colortype Co. case, while as to those of the second class the importers urged that they were within the rule of that case, which the Government denied, and the argument in this court really proceeded upon the theory that the only issue was whether these cards of the second class were or were not entitled to free entry as within the earlier decision. The Government, however, renewed and emphasized its contention in the Colortype Co. case that the collocation of paragraph 652 required that drawings or sketches to be entitled thereunder to free entry should possess genuine artistic merit of the higher order of art.

In view, however, of the concession that the articles represented by two of the exhibits were quite like those of the Colortype Co. case, such merchandise was held by us, without discussion, to be entitled to free entry. As to that represented by the other three exhibits the court said, by Judge Martin, that they were not original drawings or sketches because they consisted in substantial parts of figures laid thereon "composed of sample pieces of actual dress goods" or "of exact copies or cuts of various kinds of merchandise, such as rolls of wall paper, linoleum, upholstery goods, and similar articles," which facts, it was held, forbade their classification as original drawings or sketches in pen and ink or pencil and water colors.

Now, in the case at bar the testimony, summed up in what we have quoted from the opinion of the Board of General Appraisers, and from our own examination thereof, excludes the idea that the merchandise is made under the supervision of a master artist. It is true that it characterizes each of these separate individuals working on the cards as artists, but it clearly also establishes that each was working independently of the other and without the direction of any master mind whose purpose was to produce his own original drawing or sketch. Some of these independent workers, as the witness

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testified, from the standpoint of expediency used photographs which they colored; others used small swatches of the material which was stuck on the cards. The sketch artist outlined garments handed him for the purpose, and the wash artist colored the sketches to correspond to the colors of the garments. The garments themselves were designed by someone else. Speed in production seems to have been a more important or desirable qualification of the artists who were employed than originality or artistic taste or talent, and the whole record indicates that these exhibits are more the product of mechanical than artistic skill. It may be noted in this connection that no witness expressed the opinion that these exhibits are works of art as was the fact, as already pointed out, in the Colortype Co. case.

From the record in this case we are unable to say that the Board of General Appraisers has erroneously misconceived or applied the law in its conclusion that these are not original drawings or sketches within the meaning of paragraph 652, and therefore are unwilling to set aside its finding in that regard.

It should be added that if in fact the merchandise in the Colortype Co. case was produced as was that here, such fact was not disclosed. It is equally clear that the conclusion in that case that the articles were entitled to free entry was based upon the understanding that they were *original* drawings or sketches, produced by artists under the direction of a master artist, or master artistic mind. This would naturally imply, and the court inferred, that there was *some* artistic merit in each of the respective articles of the importation. The same may be said as to what was really decided in the MacLoughlin case, and to that view we still adhere.

In this case the board has, by its finding, supported, as we think, by the evidence, negatived the existence of these prerequisite conditions, and its judgment is therefore *affirmed*.

T. D. 39126.)

Unsigned protest.

ALLISON v. UNITED STATES (No. 2125).

1. PROTEST MUST BE SIGNED.

A protest without any signature of any kind is invalid.

2. SIGNATURE TO PROTEST.

A protest bore the following indorsement on the back: "Protest No. 1809. Filed Dec. 10/20, W. H. Allison, 67 West Fort St., Detroit, Mich. Entry No. 1826. Against classification fee paid Dec. 19th, 1920." W. H. Allison was the importer, but his name appearing in the indorsement can not be taken as his signature to the protest. For aught that appears the name W. H. Allison may have been placed there by anyone at any time, and, in view of article 645, Customs Regulations 1915, requiring the collector to make such indorsements as the above, was probably placed there by the collector after the protest left the protestant's hands.

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3. COLLECTOR CAN NOT WAIVE SIGNATURE TO PROTEST.

An unsigned protest, treated by the collector as valid and forwarded by him as valid to the Board of United States General Appraisers, is nevertheless invalid, since the collector has no authority to waive the legal requirement that a protest must be signed.

United States Court of Customs Appeals, May 9, 1922.

APPEAL from Board of United States General Appraisers, T. D. 38765 (G. A. 8447).

[Affirmed.]

Comstock & Washburn (*J. Stuart Tompkins* of counsel) for appellant.

William W. Hoppin, Assistant Attorney General (*Harry M. Farrell* and *Samuel Isenschmid*, special attorneys, of counsel), for the United States.

[Oral argument February 24, 1922, by Mr. Tompkins and Mr. Isenschmid.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

MARTIN, Judge, delivered the opinion of the court:

The primary question raised by this appeal is whether a protest must be signed in order to be valid.

The merchandise was lumber which was assessed with duty at the rate of 10 per cent ad valorem as cabinet wood under paragraph 169 of the tariff act of 1913.

A protest was filed claiming free entry for the lumber as sawed boards under paragraph 647 of the act, and the collector regularly forwarded it to the board for decision.

Afterwards the protest came on to be tried by the board, and testimony was introduced respecting the character of the merchandise. The case was then submitted for decision. Thereupon the board entered a finding that the protest was wholly unsigned by anyone, and consequently was null and void. For this reason the protest was dismissed, and this appeal is brought to review that decision.

Accordingly it appears that the only question before us is whether the board erred in dismissing the protest as aforesaid.

The consideration of this question may well be resolved into three parts: First, whether the law requires a protest to be signed in order to be valid; second, if so, whether in the present instance the protest in fact was signed as required; and, third, in case the present protest was defective as alleged, whether the proceedings above set out resulted in a waiver of the objection.

Adverting first to the legal requirements: paragraph N, Section III, tariff act of 1913, provides that the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise, shall be final and conclusive, unless the owner, importer, consignee, or agent of such merchandise, or the person paying the

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fees, charges, and exactions other than duties, shall within 30 days after liquidation, if dissatisfied with such decision, file a protest or protests in writing with the collector, setting forth therein distinctly and specifically the reasons for his objections thereto.

It is thus provided that a protest against the assessment of duty can be filed only by the owner, importer, consignee, or agent of the imported merchandise, and that the protest shall be in writing and be filed with the collector.

In an act of Congress, dated February 26, 1845, a right of action was allowed to persons paying duties under protest, for the recovery of such payments if unauthorized by law, but it was provided that such money should not be refunded by the Secretary of the Treasury, nor an action for the recovery thereof be maintained, unless the protest aforesaid should be in writing and signed by the claimant. (S. L., vol. 5, ch. 22.)

However, in an act of Congress dated March 3, 1857, we find the true prototype of the present paragraph N, above referred to. It was provided therein that the decision of the collector as to the liability of imported merchandise for duty, or its exemption therefrom, should be final and conclusive against the owner of such goods, unless such person should within 10 days thereafter give notice to the collector in writing of his dissatisfaction with such decision, setting forth therein distinctly and specifically his grounds of objection thereto. An appeal thereupon was allowed to the Secretary of the Treasury, whose decision in turn became final, unless suit was brought for the recovery of the duties in question within 30 days after such decision. (S. L., vol. 11, ch. 98.)

As has been said, the foregoing enactment may be called the prototype of the present provisions for protest. It was reenacted in substantially similar terms on June 30, 1864. (S. L., vol. 13, ch. 171.) And again in the act of June 10, 1890, in the well-known codification of the administrative provisions. (S. L., vol. 26, ch. 407.) The same provisions were successively reenacted with amendments as part of the tariff revisions of 1897, 1909, and 1913.

Leaving out of view, therefore, the act of 1845 aforesaid, wherein a signature was specifically required upon the protest, it may be said that since the act of March 3, 1857, the law has contained no specific mention of a signature upon the protest, but has required that a protest be in writing and be filed with the collector by the owner, importer, consignee, or agent of the imported merchandise.

At an early date however the department and the board construed these provisions as requiring that a protest must be signed by the protestant in order to be valid. This conclusion was based upon the opinion that in general written notices and pleadings must be signed in order to be effective; that the exigencies of the customs service

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especially justified that interpretation in this instance; and furthermore that since only the owner, importer, consignee, or agent of the imported merchandise could file a protest respecting it, a signature was necessary in order to identify the protestant accordingly.

In the Adams case, June 22, 1893, T. D. 14233 (G. A. 2197), the board in an opinion by General Appraiser Somerville, held that an unsigned protest was null and void. The following extract is taken from the decision:

We are constrained to overrule the latter protest on the ground that it is not signed by anyone. It was contended in argument that there is no requirement in section 14 of the customs administrative act that the "notice in writing" to the collector, setting forth the grounds of the protestant's objection to the collector's decision, commonly called a "protest," should be signed by anyone. This section is but a condensed revision of sections 2931 and 2932 of the United States Revised Statutes, and these sections were always construed to imply that a protest must be signed by some responsible and interested person, either "the owner, importer, consignee, or agent of such merchandise," or "the person paying such fees, charges, or exactions other than duties," against the payment of which the protest is made. It is true that section 3011 of the Revised Statutes (which, with sections 2931 and 2932, was repealed by section 29 of the act of June 10, 1890), provided in effect that no recovery should be allowed in the action authorized by statute against the collector for the refund of duties illegally exacted unless the protest was "in writing and signed by the claimant or his agent." The repeal of that section does not, in our opinion, change the principle that a written notice or protest of this kind must be signed by one of the interested parties named in the statute. Notices of dishonor and of protest of commercial paper, notices to quit given by landlords to tenants, notices to produce papers or to plead to an action, and other like notices, when required by law to be in writing, are all required in practice to be signed by the person whose duty it is to give such notice, or by his lawful agent.

It was not the duty of the collector, nor do we conceive it to be our duty, to go outside of the unsigned protest to ascertain by extrinsic evidence who is the responsible protestant. The uniform practice has long been to disregard protests that are unsigned by anyone. The requirement of a signature is a reasonable guaranty against the introduction in protests of impertinent matter and against pragmatism on the part of unauthorized agents.

In the Metzger case, January 8, 1896, T. D. 17822 (G. A. 3756), the board again held to the same effect, in an opinion reading in part as follows:

The uniform practice of the Board of General Appraisers, since its organization under the customs administrative act of June 10, 1890, has been to regard such a paper as a nullity, on the ground that it is not the "notice in writing" required to be lodged with the collector of customs under the provisions of section 14 of said act.

The practice of the courts is also believed to be in harmony with this rule, which was settled In re Adams (G. A. 2197), decided by this board on June 22, 1893. From this decision, although the importers were represented at the hearing by able counsel, no appeal was taken to the courts.

In the Palme case, July 16, 1907, T. D. 28322 (G. A. 6644), the board, when dealing with an importation under the tariff act of 1897, again held that an unsigned protest was a nullity, the former decisions being cited with approval.

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In addition to the foregoing decisions the following also may be noted: Protest filed by unauthorized party dismissed by board, December 9, 1891, T. D. 12255; to the same effect, board decision February 4, 1892, T. D. 12443; unauthorized protest dismissed by board, November 14, 1896, T. D. 17629; and again November 18, 1896, T. D. 17631; while on November 20, 1908, T. D. 29359, a typewritten signature was held by the board to be a compliance with the regulations; and analogous rulings in Abstract 3243, T. D. 25698; T. D. 33240; T. D. 35085.

There is no court decision, however, which bears directly upon this subject. The cases of Grandmange *v.* Schell (32 Fed. 655), Bodart *v.* Schell (33 Fed. 825), and Florio *v.* Peaslee (9 Fed. Cases No. 4890), which are sometimes cited in support of the Government's contention, are not directly in point, since they arose under the act of 1845 above noted. The statement of Corpus Juris (vol. 17, p. 648), in reference to protests that a "signature may not be dispensed with," rests upon the various authorities above cited.

On January 25, 1905, T. D. 25996, the Treasury Department issued letters of instructions to the customs service wherein it was directed that the signature of the importer upon the protest should in all instances be in ink.

In the Customs Regulations, 1908, in article 1070, relating to the "Requirements in protest," it was provided that the signature of the protestant or his attorney should in all instances be in ink. This provision, like that of 1905, necessarily implied that the protest must in all instances be signed.

On June 13, 1914, T. D. 34541, the department issued instructions to collectors upon the subject of protests, and defined a protest to be "A writing addressed to the collector of customs and signed by the owner, importer, or consignee of the merchandise, or by the agent of any of them, objecting to the liquidation of an entry, or to the same decision followed in the liquidation of a number of entries."

In Customs Regulations, 1915, article 644, the foregoing definition of the protest was substantially reaffirmed.

Two of the foregoing departmental regulations, it should be noted, were published prior to the tariff revisions of 1909 and 1913, and those acts reenacted the provisions thus interpreted by the department without change of phraseology in this respect. For the department's authority to establish such regulations, see section 251, Revised Statutes, wherein Congress has provided that the Secretary of the Treasury shall prescribe "regulations, not inconsistent with law, to be used under and in the execution and enforcement of the various provisions of the internal-revenue laws, or in carrying out provisions of law relating to raising revenue from imports, or to duties on imports, or to warehousing; he shall give such directions to collec-

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tors and prescribe such rules and forms to be observed by them as may be necessary for the proper execution of the law; * * *."

The question whether a protest must be signed in order to be valid has never come directly before this court. In the case of Wells, Fargo & Co. *v.* United States (7 Ct. Cust. Appls. 346; T. D. 36903) the court, at one point in the decision, said: "Under subsection 14 of section 28 of the act of 1909 the protest must be signed by the owner, importer, consignee, or agent of the merchandise, and the Government claims this protest does not comply with said statute in that it was not signed by either or any of the prescribed parties, and therefore must be dismissed." However, the precise issue now in hand was not directly raised in the foregoing case, and the language above quoted was not intended as a decision of it, for the protest in the case bore a signature, and the question related only to the authority of the signer.

However, it is certain that for many years the rule obtained in practice that a signature was essential to the validity of a protest and that this was founded upon repeated rulings of the department and upon an unbroken line of decisions by the board. Apparently none of these decisions was ever appealed from. It is also true that this practice was never modified by legislation, notwithstanding the fact that several general tariff revisions were enacted subsequently thereto.

Upon a consideration of the language of the act, the long prevalence of the rule, its reasonableness, and its consistent support by the authorities, we conclude that a protest absolutely without a signature of any kind would be invalid.

The next question which presents itself is whether the protest now in question actually bore a signature of any kind. An inspection of the protest discloses the fact that no name of any person whatsoever appears upon the face of the instrument. The importation is therein referred to by its entry number, the railroad transporting it, the date of the entry, the time of the liquidation, and the marks upon the shipment. But the protest does not contain within its four corners the name of either the owner, importer, consignee, or agent of the merchandise, or of any other person. Upon the back of the paper, however, at the place where filing marks or data are usually indorsed, appears the following inscription, viz, "Protest No. 1809. Filed Dec. 10/20. W. H. Allison, 67 West Fort St., Detroit, Mich. Entry No. 1826. Against classification fee paid Dec. 10th, 1920."

The question is suggested whether this indorsement should not be accepted as a sufficient signature to the instrument. In answer, however, to the suggestion it must be observed that the record does not disclose when or by whom the indorsement was placed upon the instrument, whether by the owner, importer, consignee, or agent of

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the merchandise, or by the collector or a clerk employed by him. In article 645, Customs Regulations 1915, it is provided that "Protests shall be filed with the collector, who will give them serial numbers and stamp or write thereon the dates of receipt. The name of the protestant, entry numbers, and issue must be indorsed on each protest. A permanent record of all protests shall be kept on Customs Form 4337." Since the foregoing requirements relate to the treatment of protests after they have been filed, it seems probable that the indorsements aforesaid were placed upon the protest after it left the hands of the protestant.

Moreover it is stated by the board in its decision that the importer in a letter written to them after the submission of the case, made the following statement upon this subject, to wit, "Through an error on my part I forgot to sign the protest, although I filed the protest and paid the fees on the 10th of December as per receipt herewith inclosed." In the same letter the board was asked to "request the collector to grant me (importer) permission to sign the copy that he has on file in his office." The board did not comply with this request, but nevertheless the case was set for further hearing at Detroit two months after the date of the letter, and although the protestant was represented by counsel at the hearing no claim was made that the protest had in fact been signed in any manner. Under the circumstances therefore it can not be assumed that the indorsement was upon the document when it was filed, and at any rate it is manifest that it was never placed there by anyone to serve as a signature to the protest. We conclude therefore that according to the present record the protest was absolutely without a signature when it was filed with the collector.

The third question is whether the defect thus found was effectually waived by the Government by force of the collector's action, or by submission of the case to the board at the trial without any objection by the Government upon this point.

It is plain that the collector made no objection to the form of the protest when it was filed with him, and furthermore when he forwarded it to the board he reported that "The requirements of paragraph N of Section III, act of October 3, 1913, have been complied with by the protestant. Protest was filed and fee paid within the statutory period." It is fair to assume that the failure to sign was a mere oversight upon the part of the importer, and that the defect was not noticed by the collector, nor was it discovered until the board came to consider the case for decision.

We feel assured that the action of the collector would have amounted to a waiver of the defect in question were the matter one relating to his individual interests only, but we are convinced that the collector when acting officially has no authority to waive a compliance by the

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importer with the requirements of the law. He can do this neither expressly nor impliedly.

The following quotation from the decision of Judge Coxe, in United States *v.* Schefer (71 Fed. 959), is in point:

> The question in this cause arises upon the sufficiency of the protest. It is conceded upon the part of the importers that the protest is insufficient, under section 14 of the customs administrative act of June 10, 1890. They contend, however, that the collector is estopped from raising this question, for the reason that in making his return to the board he stated that the requirements of the law had been complied with by the importers. If any proposition of tariff law is clearly established, it is that a valid and timely protest is a condition precedent to a recovery of duties by the importer. I am inclined to think that this is a condition which neither the collector nor any other officer of the United States has power to waive.

In the case of Pine Lumber (18 Fed. Cases, No. 10523), Judge Nelson said in part:

> The deputy collector had no power to waive the requirements of the law and allow the goods to enter the United States without a compliance with them. In this case, however, no such permission was given.

See Bradley Martin, jr., *v.* United States (3 Ct. Cust. Appls. 384; T. D. 32982); Kronfeld, Saunders & Co. *v.* United States (4 id. 60, T. D. 33308); United States *v.* Saunders (6 id. 86, T. D. 35337); and United States *v.* Cone & Co. (10 id. 120, T. D. 38375).

We think that the same reasons and authorities which preclude the theory of a waiver by the collector have a like effect when applied to the submission of the case to the board by the Government, without objection to the form of the protest. No waiver or estoppel resulted in either instance.

We conclude therefore that the protest in question was fatally defective for want of a signature, and that the decision of the board dismissing it should be, and it is, *affirmed.*

(T. D. 39127.)

Depreciated currency.

CABLAT *v.* UNITED STATES (No. 2140).

1. EVIDENCE, RELEVANCY—CONSULAR CERTIFICATE OF DEPRECIATED CURRENCY.

   The consular certificate of depreciated currency has no bearing where the invoice stated the value in United States dollars and in standard French coin francs.—United States *v.* Tiffany & Co. (10 Ct. Cust. Appls. 247; T. D. 38576).

2. ERROR WITHOUT INJURY.

   After decision on appeal to reappraisement by a general appraiser became final, it was the collector's duty to liquidate upon the basis of this appraisement. Where, however, he liquidated on the basis of the value stated in the invoice and this value was smaller than the appraised value, his error worked no injury to the importer.

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United States Court of Customs Appeals, May 9, 1922.

APPEAL from Board of United States General Appraisers, G. A. 8462 (T. D. 38848).

[Affirmed.]

Barnes, Chilvers & Halstead for appellant.

William W. Hoppin, Assistant Attorney General (*John A. Kemp* and *Harry M. Farrell*, special attorneys, of counsel), for the United States.

[Oral argument February 17, 1922, by Mr. Halstead and Mr. Farrell.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

MARTIN, Judge, delivered the opinion of the court:

In this case the appellant claims that the dutiable value of the merchandise was 160,436.90 francs in depreciated French currency, then quoted at about 50 per cent of the normal exchange value of standard coin francs in terms of United States money; that this condition was regularly established before liquidation by means of a consular currency certificate duly filed with the collector, as well as by an official appraisement of the merchandise upon an appeal to reappraisement; but that the collector nevertheless treated the aforesaid valuation of 160,436.90 francs as if that sum signified undepreciated or standard coin francs, and accordingly assessed ad valorem duty thereon without allowance for the actual depreciation aforesaid; thereby in effect exacting double duty upon the importation. This complaint presents the issue now upon appeal.

In coming to consider this question it seems well to refer first to certain provisions of the statutes and regulations which are relevant thereto.

It is provided by law that all invoices of imported merchandise shall be made out in the currency of the place or country from whence the importation shall be made, or, if purchased, or agreed to be purchased, in the currency actually paid, agreed upon, or to be paid therefor. (Par. C, Sec. III, tariff act of 1913.)

It is the duty of the Secretary of the Treasury on the 1st day of January, April, July, and October in each year, to issue a proclamation wherein the values of the standard coins of the various foreign nations of the world shall be expressed in the money of account of the United States. And during the quarter succeeding such a proclamation the values so proclaimed shall be followed in estimating the value of all foreign merchandise exported to the United States. (Sec. 25, tariff act of Aug. 27, 1894.)

In the discharge of this duty, on January 1, 1920, the Secretary of the Treasury proclaimed the value of the standard coin franc of France for the period now in question to be 19.3 cents in terms of United States money. (T. D. 38321.)

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It is provided furthermore that the President may cause to be established fit and proper regulations for estimating the duties on merchandise imported into the United States, in respect to which the original cost shall be exhibited in depreciated currency, issued and circulated under authority of any foreign Government. (Sec. 2903, Rev. St.)

In the exercise of the foregoing authority a customs regulation was duly published that if the currency specified in an invoice is then actually exchanged for United States currency in the country of exportation at a rate which is lower than the value proclaimed by the Secretary of the Treasury, the United States consul at the port of exportation shall attach to the invoice a certificate showing the rate at which such currency is exchanged for United States money in the principal markets of the country at the time; and the currency of the invoice shall be reduced by the collector of customs to United States currency in accordance with such certificate. In the absence of a currency certificate as aforesaid, the collector shall reduce the foreign currency named in the invoice to United States money in accordance with the value of foreign coins of similar denomination as proclaimed by the Secretary of the Treasury for the quarter in question. (T. D. 38187.)

The importation in the instant case consisted of 500 cases of ferrochrome, purchased in France by the International High Speed Steel Co., and entered at the port of New York on February 14, 1920. The invoice of the merchandise is so important in the consideration of this case that its contents must be set out at this point in detail.

The invoice describes the merchandise as 50,000 kilograms net of ferrochrome, with a content of 62.70 per cent pure chrome; the latter is also computed in pounds, to wit, 69,115 pounds. The price of pure chrome is then stated in terms of United States money at 44 cents per pound, and the total value stated at $30,410.60. The invoice then reduces the latter sum to francs, using a divisor of 19.3 cents, and stating the result to be 157,567.90 francs. It should be noted that this computation converts the $30,410.60 aforesaid into standard coin francs and not into depreciated francs, since the divisor thus employed, to wit, 19.3 cents, was at that time the value in United States money of a standard coin franc as proclaimed by the Secretary of the Treasury for the quarter in question. Accordingly the invoice, as thus described, states the total value of the chrome content of the merchandise to be $30,410.60 in United States currency, and correspondingly to be 157,567.90 francs in the standard coin currency of France. But the invoice proceeds further. It next states the price of the ferrochrome as shipped (as distinguished from the chrome content only) to be 3,151.36 francs per 1,000 kilograms, and thereby again finds a total value of 157,567.90 francs for

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the entire importation. It need hardly be said that this total again signifies standard coin francs of French currency, and that the terms of the invoice directly and unmistakably preclude the interpretation that the francs therein named were depreciated in value as compared with standard coin francs, or with United States currency at the normal rate of exchange established by the Secretary of the Treasury.

It may here be recapitulated that the merchandise was obtained in France by means of purchase; that accordingly it became the duty of the shipper to make out the invoice in the currency actually paid or agreed to be paid therefor; that in fact the invoice when made out stated the total price in two several currencies, to wit, $30,410.60 in United States money and 157,567.90 francs in French money, which two respective sums were stated to be equivalents; and that these sums were in fact equivalents, only however upon the assumption that the French francs aforesaid were standard coin francs.

The merchandise in question was entered for duty upon the foregoing invoice on February 14, 1920, but the price thereof as stated in the entry was virtually reduced to about one-half that stated in the invoice. For whereas the entry, as well as the invoice, stated the price at 157,567.90, increased however in the entry by certain unimportant additions, it was particularly specified in the entry that these were depreciated francs, which were valued relatively at 9.56 francs for $1 of United States currency. And it was accordingly specified in the entry that the price when converted into United States currency was $16,782. It hardly need be recalled that the price in United States money named in the invoice was $30,410.60.

At this point we may again note the regulation above referred to, whereby, when an invoice is made out in a depreciated currency, a consular certificate may be procured in proof of the depreciation. At the date of the entry just described, the entrant produced no certificate of that character nor was such a certificate attached to the invoice, although the entry rested upon a claim of depreciated currency. But the entrant then engaged with the collector to secure such a certificate from the proper consul, and to file the same at the customs before liquidation. A bond to that effect was executed on behalf of the entrant and delivered to the collector. And afterwards, before liquidation, a certificate signed by the proper consul was delivered to the collector and was accepted by him as a compliance with the bond just mentioned. The certificate reads as follows:

AMERICAN CONSULAR SERVICE,
Lyons, France, December 30, 1920.

I, C. Carrigan, consul of the United States of America, do hereby certify that the value (paper silver) of the currency of France, in which currency invoice of merchandise No. 3132 was made out, was exchanged for United States currency in the

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principal markets of France on the date of the certificate of said invoice on the 17th day of November, 1919, at the rate of francs 9.47½ (invoice currency) for one dollar (United States currency).

C. CARRIGAN, *American Consul.*

We do not overlook the fact that the regulation providing for the issuance of such a consular currency certificate requires that the consul shall attach the same to the invoice in question. In the present case the certificate as just mentioned was not attached to the invoice, but was issued at a later date. It was stated to the court in argument that the delay was caused by administrative difficulties and that the Government would make no objection to the certificate on that account. This decision therefore takes no further notice of the fact.

The invoice and the entry aforesaid came to the local appraiser for action, and that officer appraised the merchandise in francs at a value of 7 francs per kilogram, which, of course, would equal 7,000 francs per 1,000 kilograms. It will be remembered that in the invoice the price of 3,151.36 per 1,000 kilograms is given; accordingly the value per kilogram in francs as found by the local appraiser was more than double that stated in francs in the invoice. No explanation of this radical difference appears in the record but it may readily be believed that the local appraiser undertook to appraise the merchandise in depreciated francs, and accordingly more than doubled the nominal price as compared with the invoice, not as an advance over the actual invoice price, but as a means of bringing the value thus appraised in depreciated francs up to the price named in the invoice in standard coin francs. The result of such a course would simply be to affirm the invoice valuation by increasing the nominal total of francs sufficient to offset the depreciation thereof as incorporated in the appraisement. This, however, is of passing interest only, for the appellant thereupon appealed for a reappraisement of the merchandise. This was had in due course by a general appraiser, who likewise reported a valuation in francs. A value of 3,150 francs per 1,000 kilograms, with 55 francs additional per kilogram for each unit in excess of 60 per cent chromium content, was reported. It is conceded that the true chrome content of the ferrochrome was 61.15 per cent, and the foregoing appraisement, when taken upon that basis, totals 160,562.50 francs, as against 157,567.90 francs stated in the invoice. No appeal was taken from this appraisement; it therefore finally established the value in francs of the merchandise.

The collector, acting upon the foregoing record, held that the invoice aforesaid was made out actually in money of the United States, with a stated price for the merchandise of $30,410.60, and that in consequence of that fact the consular currency certificate aforesaid was inapplicable and of no force or effect. The importation was thereupon assessed with duty at a conceded ad valorem

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rate upon a dutiable valuation of $30,410.60, being an amount equal to that stated in the invoice aforesaid.

The appellant protested against the assessment, upon the claim that the valuation upon which duty had been assessed was in excess of the entered value of the merchandise and also in excess of its final dutiable value as found on reappraisement and returned by the general appraiser. The protestant claimed that duty should have been assessed upon the entered value as set forth in the entry, reduced to United States money at the rate of exchange set forth in the consular certificate of currency value, or upon the value returned by the general appraiser converted into United States money at the rate of exchange shown in the currency certificate aforesaid.

As has been indicated, the board overruled the protest, and this appeal was taken from its decision.

Upon a consideration of the foregoing record we agree with the collector that the invoice unmistakably establishes the fact that the merchandise in question was purchased in France at and for the price of $30,410.60 United States money, or for the equivalent thereof in the standard coin francs of France at the rate of exchange proclaimed by the Secretary of the Treasury pursuant to law. Therefore it can not be said that "the currency specified in the invoice" was at the time depreciated, or was "exchanged for United States currency in the country of exportation at a rate which is lower than the value proclaimed by the Secretary." And a consular currency certificate accordingly could not lawfully issue, or if actually issued could have no effect, since its issuance was conditioned upon the existence of such a depreciation in the currency of the invoice.

It is true that such a certificate if lawfully issued is conclusive authority regarding the extent of the depreciation which it attests.—Cramer *v.* Arthur (102 U. S. 612). But on the other hand the issuance thereof is not conclusive evidence to the effect that the merchandise in question was in fact purchased with such depreciated currency nor that it was purchased at the price named in the invoice or certificate.—United States *v.* Tiffany & Co. (10 Ct. Cust. Appls. 247, 251; T. D. 38576). And in the instant case no question upon that subject can possibly arise, since the invoice specifically negatives such an assumption and unmistakably declares that the price of the merchandise as therein set out was an undepreciated price in United States currency, or its equivalent in standard French francs at the rate of exchange proclaimed by the Secretary of the Treasury.

Consequently the currency certificate in question possessed no force or effect in the case, and it was proper for the collector to assess duty without reference thereto. But since the merchandise had been appraised by a general appraiser upon an appeal to reappraisement,

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and no appeal had been taken from his decision, it seems clear that the assessment should have been upon the dutiable valuation thus found. That valuation, as stated above, was expressed in francs, and for the purpose of assessment these should have been converted into United States currency at the rate of exchange proclaimed for the time by the Secretary of the Treasury, namely, 19.3 cents per franc. Instead of this the collector apparently ignored the appraisement and assessed duty upon the valuation in United States currency first set out in the invoice. This irregularity, however, did not prejudice the rights of the importer, since, as above appears, the value in francs found by the appraiser was greater than that stated in francs in the invoice and correspondingly greater than the equivalent of that sum in United States money. It thus appears that the adoption of the price in United States currency first set out in the invoice, to wit, $30,410.90, as the dutiable valuation of the merchandise, resulted in the assessment of a less amount of duty than would have followed from the adoption of the appraisement in francs reported by the general appraiser when reduced to United States currency at the rate of 19.3 cents per franc.

Accordingly the decision of the board overruling the protest is *affirmed*.

(T. D. 39128.)

Ad valorem duty—Weight of yarn.

DOWNING & CO. *v.* UNITED STATES (No. 2144).

1. "ENTERED VALUE."

The "entered value" of paragraph I, Section III, tariff act of 1913, signifies the unit of value and not the gross dutiable valuation given in the entry.

2. WEIGHTS, INVOICE AND TRUE.

It has been held repeatedly that the true weight of imported goods must be taken as the basis of duties, irrespective of the weights given in the invoice.

3. WEIGHT OF MERCERIZED YARN.

Bales of cotton yarn were purchased abroad by importers and mercerized abroad at their order. They were invoiced at the weights before being mercerized and entered at the invoice weights. Duty was levied ad valorem on the basis of the weights stated in the entry. Importers showed the true weights and that mercerization caused yarn to lose weight. Duty should have been levied on the basis of the true weights and not those stated in the entry.

United States Court of Customs Appeals, May 9, 1922.

APPEAL from Board of United States General Appraisers, G. A. 8471 (T. D. 38885).

[Reversed.]

Allan R. Brown for appellants.

William W. Hoppin, Assistant Attorney General (*Bernard Hahn* and *Samuel Isenschmid*, special attorneys, of counsel), for the United States.

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[Oral argument April 26, 1922, by Mr. Brown and Mr. Isenschmid.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

MARTIN, Judge, delivered the opinion of the court:

The importations which gave rise to the present question consisted of two bales of mercerized cotton yarn.

The bales were invoiced by weight, to wit, 600 pounds each, and at a stated unit price per pound. They were entered for duty at the same weight as that stated in the invoice, but in the entry the importers made certain additions per pound to the price given in the invoice, in order to raise it to the actual market value of the merchandise.

Thereupon the collector classified the yarn for duty under paragraph 250 of the tariff act of 1913. That paragraph imposes certain ad valorem rates of duty upon such yarns, graduated according to the numbers thereof. Accordingly the amount of the assessment was ascertained by applying the proper ad valorem rate of duty to the dutiable valuation of the merchandise, and as a necessary preliminary the amount of the dutiable valuation was ascertained by multiplying the stated weight of the bales, to wit, 600 pounds each, by the unit value per pound of the yarn as stated in the entry.

The importers thereupon protested against the assessment, claiming that immediately upon the receipt of the bales they had weighed them and had found their actual weights to be 580 and 588 pounds, respectively, instead of 600 pounds each as stated in the invoice and entry. They claimed that the correct weights as found by them should be taken as the basis for computing the dutiable valuation of the merchandise, instead of the incorrect weights given in the invoice and entry. The importers did not dispute the correctness of the ad valorem rate of duty adopted and applied by the collector, their contention being limited to the question of weights alone.

The protest was submitted to the board and was overruled. In the course of the board's decision it was said—

> The principle of law is well settled that the landed weights shown by the report of the Government weigher should be adopted in the assessment of duty, but that, of course, only applies when the weight in some measure controls the rate or amount of duty. We are unable to see how that principle in any way applies to this case, as under paragraph 250, and there is no question that that is the paragraph of the law under which the merchandise is dutiable, the duty is an ad valorem one pure and simple, and the collector has correctly applied it.

We think that in the present instance the weight of the merchandise in fact did in some measure control the amount of duty, since it controlled the dutiable valuation upon which the ad valorem rate of duty was calculated or applied. That is to say, the dutiable valuation of the merchandise was predicated upon two units, namely, the

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number of pounds of yarn in the bales and the price or value thereof per pound. If either of these two units in the calculation were excessive it would follow, of course, that the dutiable valuation would be excessive, and consequently that the amount of the assessment itself would be excessive.

The Government does not seriously deny the assertion that the designated bales, when landed, weighed only 580 and 588 pounds, respectively, instead of 600 pounds each, as stated in the invoice and entry. It appears that the bales when first purchased in England by the importers contained 600 pounds each of gray cotton yarn; also that upon the importers' orders they were sent elsewhere by the vendors to be mercerized; and that the yarn in the bales lost in weight by reason of that operation. Nevertheless, when the bales were invoiced for exportation to this country, the original weights thereof before the mercerization of the yarn were given in the invoice instead of the reduced ones. This procedure, it appears, followed the usual custom of the trade, although in this country the merchandise is dealt in upon the basis of its mercerized weight. And when the importers came to enter the merchandise for duty they gave the weights as stated in the invoice, but nevertheless made such additions to the unit price thereon as were in their opinion sufficient to raise it to the actual market value of the mercerized yarn. The price per pound as thus entered by the importers was in due course approved by the local appraiser.

When, however, the bales were delivered to the importers and were weighed by them the shrinkage in weight was ascertained, and the protest was thereupon filed. The extent of the shrinkage in weight at the time of importation was proven without contradiction by the testimony taken before the board. Furthermore the appraiser in his answer to the protest stated, "That tests made at various times show that cotton yarns when mercerized lose from 2 to 3 per cent in weight. The invoice weights represent the weight of the yarn in the gray condition and not in the finished condition as imported. The weight in the finished condition is the dutiable weight."

In the Government's brief it is claimed with reference to the importation that "the value is dependent on the price per pound, and the importer's declaration on entry covers the foreign market value of the original yarn weight in the gray. It represents also the foreign market values of the landed cotton, although the total invoiced weight or quantity was diminished by the mercerization process. The gray original weight per bundle would be 10 pounds; in a mercerized condition, as imported, the yarn would weigh 9.7 and 9.8 pounds per bundle. The value for duty purposes was found by multiplying the entered or appraised unit price per pound by 10, and not by 9.7 and 9.8."

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However, it clearly appears from the record that the entered value of the yarn per pound did not represent its value in the gray but in its mercerized condition at the time of importation. And this, of course, was the correct procedure, for it was the duty of the importers when stating in the entry the value per pound of the yarn to give its value in its condition when imported and not in its condition before exportation to this country. The dutiable valuation of the bales, therefore, should have been ascertained by multiplying the entered price per pound by the true number of pounds of yarn when landed. This was not done by the collector, but in fact the value per pound of the mercerized yarn was multiplied by the weight in pounds of the yarn when in the gray.

It may be said in brief, therefore, that in the present transaction a correct ad valorem rate of duty was applied, but, nevertheless, an excessive amount of duty was exacted, since duty was taken upon an excessive gross valuation of the merchandise. The valuation was excessive, as aforesaid, because it was found by taking an excessive unit of weight and multiplying it by the unit of price or value. The only question, therefore, is whether the error was capable of correction under the law.

The Government contends that no relief can be afforded to the importers under the circumstances, inasmuch as in the entry they used the invoice weight of 600 pounds in figuring the gross dutiable valuation of the merchandise and the estimated duties thereon. The Government contends that to permit a correction of the weights after such an entry would violate the provision in paragraph I, Section III, act of 1913, reading in part as follows:

> The duty shall not, however, be assessed in any case upon an amount less than the entered value, unless by direction of the Secretary of the Treasury * * *.

This objection, however, finds an answer in the fact that the term "entered value," as used in the foregoing provision, signifies the unit of value and not the gross dutiable valuation given in the entry. In this case the unit of value was the price of the yarn per pound as given in the entry and confirmed by the appraisement of the local appraiser, and accordingly no less a price per pound could be adopted in finding the dutiable valuation of the merchandise for assessment. But that provision does not prevent the ascertainment of the correct landed weight of the merchandise, notwithstanding the statement of the invoice and entry, and the determination of the duty by multiplying the correct unit price per pound by the corrected number of pounds as so ascertained. That operation, it is true, results in this case in lessening the dutiable valuation of the merchandise, with a consequent lessening of the amount of the assessed duty, nevertheless duty is not taken in such case upon less than the entered value of the importation within the purview of the statute.

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This subject has been fully discussed by this court in several previous decisions, and we content ourselves with citing some of them, referring hereby also to the authorities cited in them, as follows: United States *v.* Bush & Co. (4 Ct. Cust. Appls. 519; T. D. 33938); s. c. (5 id. 127; T. D. 34187); United States *v.* Suzarte & Whitney (8 id. 99; T. D. 37219); United States *v.* Kuttroff (9 id. 239; T. D. 38204); and United States *v.* Woodward-Newhouse Co. (11 id. ——; T. D. 39100).

It may be observed furthermore that no injustice is done to the customs in the present case by the adoption of the foregoing principle, since the importers at entry made such additions to the invoice price of the merchandise as were sufficient in fact to raise it to the true market value thereof in its imported condition. That is to say, the value so entered was the value per pound of the mercerized yarn. It follows therefore that the total dutiable valuation should be found by applying that value per pound to the number of pounds of mercerized yarn in the imported bales, rather than to the number of pounds of yarn in them in the gray before they were exported to this country.

We may observe also that it has been held repeatedly that the net weight of the goods actually imported must be taken as the basis of duties, irrespective of the weights given in the invoice. The following authorities are cited in support of this view: T. D. 14858, G. A. 2541; T. D. 21525, G. A. 4529; Mariott *v.* Brune (9 How. 619); United States *v.* Southmayd (9 id. 637); Austin *v.* Peaslee (2 Fed. Cas. 235); Weaver *v.* Saltonstall (38 Fed. 493); Fachri *v.* Magone (53 id. 789); In re McRath, T. D. 25767 (G. A. 5848); United States *v.* Nash (27 Fed. Cas. 75).

We conclude therefore that duty should have been assessed upon the basis of their actual net landed weights, to wit, 580 pounds for bale 583, entry No. 128385, and 588 pounds for bale 636, warehouse bond No. 45271, and accordingly that the protest to that effect should have been sustained by the board. The board's decision overruling the protest is therefore reversed, and the case is remanded. *Reversed.*

(T. D. 39129.)

Manufactures of glass.

BACHE & CO. *v.* UNITED STATES (No. 2156).

1. CONSTRUCTION, PARAGRAPH 90, TARIFF ACT OF 1913—GLASS AND MANUFACTURES OF.

Paragraph 90, tariff act of 1913, levying additional duty on glass "when bent, ground, obscured, frosted, sanded, enameled, beveled, etched, embossed, engraved, flashed, stained, colored, painted, ornamented, or decorated," negatives the idea that glass imported in shapes and sizes suitable for use must be classified

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as manufactures of glass rather than as glass, since manifestly some of these processes could not advantageously be applied to pieces of glass unless they were already in the shape and size in which they could be finally used.

2. CONSTRUCTION, PARAGRAPHS 85, 88, 90, AND 95—GLASS AND MANUFACTURES OF.

Glass is not taken without the classification of paragraphs 85, 88, and 90, tariff act of 1913, as glass and placed within that of paragraph 95 as manufactures of glass by reason of being in a size and form available for immediate use. This result would follow only in case the glass forms should be exclusively appropriated to a given use as manufactured articles.

3. CONSTRUCTION, ADMINISTRATIVE PRACTICE—LEGISLATIVE SANCTION.

It is a well-known rule of construction in tariff cases that a long-established departmental practice in the classification of merchandise for duty should be regarded with favor by the courts, and that "the implied approval and adoption thereof by Congress in the reenactment of the applicable provisions of the law in essentially similar terms should have the effect and consequence of establishing the status of the article for tariff purposes and that this should prevail until changed by legislative action."

4. UNITED STATES *v.* BACHE & CO. (7 CT. CUST. APPLS. 445; T. D. 37011) EXPLAINED—GLASS AND MANUFACTURES OF.

The glass exit signs in United States *v.* Bache & Co. (7 Ct. Cust. Appls. 445; T. D. 37011) were denied classification as glass and held to be manufactures of glass, not because they were of proper form and size that they should be used for their destined purpose without further manipulation, but because they were completely manufactured articles fit for one use only.

5. GLASSES FOR CLOCKS AND COMPUTING SCALES—GLASS AND MANUFACTURES OF.

Pieces of glass with beveled edges, made to order as to size and shape for use as glasses for clocks and computing scales, but capable of various other commercial uses, are beveled glass under paragraphs 85, 88, and 90, tariff act of 1913, and not manufactures of glass under paragraph 95.

United States Court of Customs Appeals, May 9, 1922.

Appeal from Board of United States General Appraisers, G. A. 8478 (T. D. 38910).

[Reversed.]

Walter E. Hampton for appellants.

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence* and *Oscar Igstaedter*, special attorneys, of counsel), for the United States.

[Oral argument April 25, 1922, by Mr. Hampton and Mr. Lawrence.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

MARTIN, Judge, delivered the opinion of the court:

This case relates to two importations of glass. One of these consisted of pieces of polished plate glass, oval in shape with beveled edges, the cross dimensions being approximately 13 by 16 inches, having a thickness of three-eighths of an inch. It is said that these were designed for use in the manufacture of computing scales. The second class consisted of circular pieces of window glass having beveled edges, each piece having a diameter of $2\frac{1}{16}$ inches. It is said

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that these were designed for use as clock glasses. All of the glass was clear and unground, having no markings of any kind upon its surface.

The appraiser described the merchandise as "beveled clock glasses made from cylinder glass, and computing scale glasses oval in shape and beveled, made from plate glass." It was returned for duty at 30 per cent ad valorem under the provision for manufactures of glass, contained in paragraph 95 of the tariff act of 1913, and was assessed with duty by the collector accordingly.

The importers protested against the assessment, claiming that the merchandise should be classified for duty in part as common window glass and in part as plate glass under paragraphs 85 and 88 of the act, and should be assessed thereunder at various rates of duty according to size, and in addition should be assessed 4 per cent ad valorem under paragraph 90 because of the beveled condition of the glass.

The protest was submitted to the board upon exhibits and testimony, and was overruled. The importers have appealed from that decision.

It is unnecessary in this decision to copy the paragraphs cited in the protest. It is sufficient to note that paragraph 85 imposes duty upon common window glass at specific rates which are graduated according to the size of the glass. And, similarly, duty is imposed by paragraph 88 upon cast polished glass, if unsilvered, at specific rates varying with its size; while in paragraph 90 it is provided that both descriptions of glass shall be subject to a duty of 4 per cent ad valorem in addition to the rates otherwise chargeable upon them, if "bent, ground, obscured, frosted, sanded, enameled, beveled, etched, embossed, engraved, flashed, stained, colored, painted, ornamented, or decorated."

On the other other hand, paragraph 95 of the act imposes duty, among other things, upon "all glass or manufactures of glass or paste or of which glass or paste is the component material of chief value, not specially provided for" in the act.

It may be repeated that the importers claim assessment for the merchandise under the several provisions for common window glass and polished plate glass, beveled, under paragraphs 85, 88, and 90 aforesaid, while the Government contends for its assessment as manufactures of glass under paragraph 95 aforesaid.

It is clearly established by the testimony that in point of component materials and of the methods and processes employed in its production as well as its character in general, the imported glass would be entitled to the description of common window glass, and of plate glass, beveled; and that description should govern in this case unless negatived by the fact that the glass was made and imported in sizes which are suitable for immediate use as clock glasses and computing

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scale glasses. It appears also that the glass was made in these sizes according to patterns prescribed by the purchaser.

It appears, however, that the sizes and forms of the present importations, while making them, respectively, suitable for use as clock glasses and computing scale glasses, do not have the effect commercially of appropriating them exclusively to those uses nor of restricting their use to those purposes only. It appears, furthermore, that many stock sizes and forms of glass are imported which are capable of use without alteration, or which may be reduced to other forms or sizes for use. The following extracts from the testimony of the witness, Sobel, establish and illustrate that fact:

General Appraiser McClelland. My question mainly is what the instruction "cut to pattern" means. Whether it is cut to pattern for some particular use that the customer has?

Witness. That would be the conclusion we should reach, but, as I said there, if an order came from a jobber, a jobbing house, for glass cut to pattern, we would hardly know what it would be used for. Of course we would draw our own inferences, but if we got an order from some scale manufacturer specifying polished plate glass three-eighths inch thick, edges beveled, we would know that was intended for some part of a scale.

By General Appraiser McClelland:

Q. But in any case would it convey to you that it was destined for some particular use?—A. That would be true about any article of glass that is imported.

Q. Cut to pattern?—A. Even if not; for instance picture glass. The picture framer says, send me one case 12 by 16, 100 of 12 by 16—12 inches by 16. That is going to be used in the actual size in which it is imported in the frame.

Q. But those are standard sizes?—A. They are, in a way, but there are a great many sizes that are not standard.

Q. Exhibit 1, for instance, is not a standard size, is it?—A. It is a standard size for certain people; yes, sir.

Q. What I want to know is this: Whether, when you get instructions, such as you detailed, to cut the glass to pattern, whether that does not convey to you that the pattern is prepared so that the glass may be cut for a particular use?—A. That is true in every single case, of every order that you——

Q. Cut to pattern?—A. Whether cut to pattern or not.

Q. I am just confining it to cases where you cut to pattern.—A. Certainly, to be intended for some use; either might be used for window or a table top, or a transom, or tray, or scale, or a porthole, or a thousand and one things. This particular sample here——

Mr. Hampton. Which one?

A. No. 1 might be used for a scale, it might be used for a tray, for a top for a desk, and other innumerable things that it could be used for. Of course, if it was shipped to a jobber, we could not tell what it would be used for. We would simply use our own opinion that it might be used for any one of the things mentioned.

The foregoing testimony and an inspection of the exhibits convince us that the glass forms now in question are capable of various other commercial uses in addition to those named by the appraiser. And upon these facts we conclude that the merchandise when imported had retained its original character as window glass and plate glass, beveled, and had not been advanced to the status of a new or different

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manufacture. The only incident or characteristic which is cited as having thus advanced the tariff status of the glass is the fact that it was made to order in a prescribed shape and form. But it must be observed that paragraph 90 provides for an additional duty of 4 per cent ad valorem upon such glass when treated by various processes, specifically when ground, obscured, frosted, sanded, enameled, beveled etched, embossed, engraved, flashed, stained, colored, painted, ornamented, and decorated. Accordingly it must be concluded that the application of those processes alone should not have the effect of converting window or plate glass into a new manufacture, but should simply subject it to the increased assessment provided by the paragraph. This fact negatives the view that if such glass be imported in a form suitable for use, it should for that reason be assessed as a manufacture of glass For manifestly some of the processes thus allowed could not advantageously be applied to pieces of glass unless they were already in the shape and form in which they could be finally used. For example, the edges of a piece of glass could hardly be beveled advantageously unless the glass were already in a shape ready for use. The same statement would doubtless apply in some measure to the processes of enameling, embossing, engraving, ornamenting, or decorating. It seems indeed to be within common knowledge that in many if not in most instances such processes could not be applied with commercial advantage or economy to stock sizes of glass indiscriminately, but would naturally require that the pieces so treated should be in a size and form fit for immediate use. It will be noted, however, that these processes do not in any case imply that the pieces so treated would thereby necessarily be appropriated exclusively to a single or peculiar use, or made incapable of any use except one.

We believe therefore that pieces of plate or window glass which otherwise respond to the descriptions contained in paragraphs 85, 88, and 90 are not advanced to the status of manufactures of glass because of being in a size and form available for immediate use, but that this result would follow only in case the glass forms should be exclusively appropriated to a given use as manufactured articles. We think that the former decisions of this court sustain that conclusion.

In the case of United States *v.* American Thermo-Ware Co. (2 Ct. Cust. Appls. 9; T. D. 31571) the court dealt with "oval-shaped glasses suitable for the manufacture of automobile goggles." These were held to be dutiable as common window glass, bent, under paragraphs 101 and 107 of the tariff act of 1897, as against the collector's classification of glass lenses, ground and polished to a spherical, cylindrical, or prismatic form.

In United States *v.* American Thermo-Ware Co. (4 Ct. Cust. Appls. 21; T. D. 33218) the merchandise was certain disks or pieces

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of glass, bent, used in the manufacture of auto goggles. The court held them to be dutiable as window glass, bent, under paragraphs 99 and 104 of the tariff act of 1909. Judge Smith said for the court:

But apart from all that, there was in the case referred to uncontradicted evidence to the effect that the glasses might be and were used for other purposes than that of making goggles. From this it would seem that the merchandise has not been so manipulated or processed as to remove it from the class of manufactures specially provided for as window glass, bent, much less to put it in the category of manufactures of glass not specially provided for.

In General Electric Co. *v.* United States (5 Ct. Cust. Appls. 528; T. D. 35176) the merchandise was parabolic mirrors, ground and silvered, and these were held to be dutiable as cast polished plate glass, silvered and bent, under paragraphs 103 and 104, tariff act of 1909. It should be noted that paragraph 103 enumerated "silvered and looking-glass plates," and contained a proviso that none of these "when framed, shall pay a less rate of duty than that imposed upon similar glass of like description not framed but shall pay in addition thereto upon such frames the rate of duty applicable thereto when imported separately."

In American Thermo-Ware Co. *v.* United States (6 Ct. Cust. Appls., 218; T. D. 35456) the importation was certain oval-shaped glasses suitable for the manufacture of automobile goggles. The glass was shown by the testimony to be "cut to form and shape and adapted and designed for use in the making of goggles, which condition, it is manifest, quite unfits it for any other practical commercial use." The court, furthermore, said of the articles "they have been so far processed as to remove them from the window-glass classification, because they are now in a condition, especially as to size, shape, and form, that has deprived them of value for any use other than in goggles, and has appropriated them definitely to that use." The court held that articles of such a description were manufactures of glass.

In United States *v.* Bache & Co. (7 Ct. Cust. Appls. 445; T. D. 37011) the merchandise was glass signs made of cylinder glass, sand-blasted and colored, with edges ground, bearing the word "exit" stenciled thereon by sand-blasting or etched with acid, ready for use as exit signs in theaters and other public auditoriums. It was held by the court that while the original material was cylinder glass, nevertheless the article as manufactured was "ready for use, a use to which as window glass material it could not be put, and in fitting it for such use it has been commercially excluded from other uses." The court said: "It is a sign pure and simple, containing or conveying definite and certain information to the beholder and is, we think, clearly an *article* colored and sand-blasted within the scope of paragraph 84."

In United States *v.* Schrenk & Co. (7 Ct. Cust. Appls. 451; T. D. 37013) the merchandise consisted of two polished cylinder glass

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sheets glued permanently together with a rim of adhesive substance to keep dampness from between them, which was designed for use as material for automobile wind shields. It was held by the court that the article thus produced was a manufacture, or at least a partial manufacture, sufficient to remove the component pieces of glass from the classification of polished glass. The court made note of the fact that the alteration in the condition of the glass had not been accomplished by means of any of the processes specified in paragraph 90 of the act.

It appears that provisions substantially similiar to those now in question existed in the tariff revision of 1890, and in all subsequent ones, including the tariff act of 1913. And it appears furthermore almost without contradiction that it was the practice under the various acts to classify and assess such merchandise as this under the enumeration of window glass or plate glass, and not as manufactured articles composed of glass. That practice was never either expressly or impliedly altered by legislative enactment, but was changed recently by departmental orders. These orders were predicated upon the department's interpretation of the decisions of this court above cited, which were understood to justify the present assessment. The instructions were published as T. D. 37316 and T. D. 39039. The last named, dated March 16, 1922, contained the following language:

SIR: The department is in receipt of your letter of the 17th ultimo, inclosing a communication from the appraiser at your port in regard to a proposed change of practice in the classification of cylinder, crown, or window glass and plate glass cut to size or otherwise prepared or fitted for immediate use in its condition as imported.

It appears to have been the practice to classify cylinder, crown, or window glass and plate glass cut in size such as 7 by 9 inches, 14 by 16 inches, and the like, and glass cut or pressed in circular, oval, or other forms and of definite sizes intended to be used as imported without further manipulation under the provisions of paragraphs 85 to 90 of the tariff act of October 3, 1913, as material and not articles.

In view, however, of the decision of the United States Court of Customs Appeals (T. D. 37011), in which the court distinguished between material and articles, and in view of subsequent decisions of the Board of United States General Appraisers (Abstracts 44737 and 44738), the department concurs in the proposed change of classification.

It may be noted that the decision of this court, cited above as T. D. 37011, is the case of United States *v.* Bache & Co. (7 Ct. Cust. Appls. 445), concerning glass exit signs, already referred to above. The abstract decisions of the board cited by the department relate to merchandise substantially similar upon principle to that now in question, the board also referring especially to the Bache & Co. case as authority.

We think that the interpretation placed by the board and the department upon the decision in question is a mistaken one. The glass exit signs were distinctively new articles, having a new name.

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a peculiar and exclusive use, and were utterly unfitted for any other use whatever. They certainly differ in principle from 7 by 9 and 14 by 16 window glass.

Furthermore, it is a well-known rule of construction in tariff cases that a long-established departmental practice in the classification of merchandise for duty should be regarded with favor by the courts, and that "the implied approval and adoption thereof by Congress in the reenactment of the applicable provisions of the law in essentially similar terms should have the effect and consequence of establishing the status of the article for tariff purposes, and that this should prevail until changed by legislative action."—Osceola Mill & Elevator Co. *v.* United States (11 Ct. Cust. Appls. —; T. D. 38938).

This rule has an important bearing in the instant case, since undoubtedly the practice prevailed under repeated tariff revisions of classifying and assessing such merchandise as this as common window glass and polished plate glass, beveled, under the paragraphs cited in the protest and their predecessors. This fact abundantly appears from the testimony and also from the published decisions, and indeed is recognized by the department's letter of instructions above in part copied. We feel safe in saying that so sweeping a change of procedure as that proposed by the department, whereby standard sizes of window glass would be withdrawn from classification as such and instead thereof assessed with a higher rate of duty as manufactures of glass, should not take place without legislative action.

We therefore hold, under the principles above indicated and in accordance with the long-established practice above spoken of, that the present importations are not dutiable as manufactures of glass under paragraph 95, but as beveled window and plate glass, respectively, as claimed by the importers in the protest.

The decision of the board overruling the protest is accordingly reversed and the case remanded. *Reversed.*

(T. D. 39130.)

Coordination of rail, water, and motor traffic in connection with the movement of Government supplies.

TREASURY DEPARTMENT, *May 20, 1922.*

To Collectors and Other Customs Officers:

Bulletin No. 7, Supplement No. 9, of the Chief Coordinator, dated May 15, 1922, is published below for the information and guidance of customs officers.

(108800.) EDWARD CLIFFORD, *Assistant Secretary.*

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OFFICE OF CHIEF COORDINATOR,
Washington, May 15, 1922.

BULLETIN NO. 7—SUPPLEMENT NO. 9.

To Heads of Government Departments and Establishments:

1. In order that proper coordination may be effected between rail, water, and motor traffic in connection with the movement of Government material and supplies, the area coordinators designated in Bulletin No. 2, Office of Chief Coordinator, corrected to May 10, 1922, have been directed to obtain from the various Government activities located within their areas certain information in regard to motor transportation and lighterage, and to coordinate these activities as far as practicable in order that the Government may be enabled to utilize to the greatest possible extent its own motor vehicles and lighters in handling Government materials between rail and steamship terminals and Federal depots, yards, and stations. At points where no Government-owned motor vehicles are available and where there are several Government activities, it is desired, wherever practicable, that but one contract be made to cover the handling of all Government stores between terminals and depots in that vicinity.

2. It is desired that this bulletin be published by each department to all its field activities in order that they may fully cooperate with the area coordinators in effecting a plan to utilize Government-owned motor vehicles and lighters to the greatest practicable extent.

(108800.) H. C. SMITHER, *Chief Coordinator.*

(T. D. 39131.)

Foreign currencies—Rates of exchange.

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), emergency tariff act of May 27, 1921.

TREASURY DEPARTMENT, *May 22, 1922.*

To Collectors of Customs and Others Concerned:

The appended table of the values of certain foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), act of May 27, 1921, during the period from May 12 to May 18, 1922, both inclusive, is published for the information of collectors of customs and others concerned.

(103512.) EDWARD CLIFFORD, *Assistant Secretary.*

Values of foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), emergency tariff act of May 27, 1921.

PERIOD MAY 12 TO 18, 1922, INCLUSIVE.

Country.	Name of currency.	May 12.	May 13.	May 15.	May 16.	May 17.	May 18.
Europe:							
Austria	Krone	$0.000117	$0.000115	$0.00011	$0.000104	$0.000104	$0.000104
Belgium	Franc	.0831	.0831	.0832	.0832	.0830	.0831
Bulgaria	Lev	.0068	.006783	.006817	.006783	.006767	.006685
Czechoslovakia	Krone	.019353	.019317	.019233	.019144	.019169	.019183
Denmark	do	.2130	.2131	.2131	.2133	.2132	.2132
England	Pound sterling	4.4446	4.4473	4.4493	4.4497	4.4486	4.4510
Finland	Markka	.020838	.020925	.020963	.020888	.020888	.020888
France	Franc	.0911	.0913	.0914	.0914	.0911	.0912

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Values of foreign currencies, etc.—Continued.

PERIOD MAY 12 TO 18, 1922, INCLUSIVE—continued.

Country.	Name of currency.	May 12.	May 13.	May 15.	May 16.	May 17.	May 18.
Europe—Contd.							
Germany	Reichsmark	$0.003453	$0.003467	$0.003480	$0.003472	$0.003441	$0.003389
Greece	Drachma	.0421	.0417	.0417	.0418	.0417	.0418
Holland	Guilder	.3865	.3866	.3867	.3875	.3884	.3877
Hungary	Krone	.001279	.001289	.001290	.001296	.001292	.001287
Italy	Lira	.0526	.0526	.0528	.0528	.0524	.0518
Norway	Krone	.1862	.1867	.1864	.1865	.1857	.1857
Poland	Mark	.000249	.000251	.000248	.000246	.000246	.000247
Portugal	Escudo	.0793	.0781	.0785	.0788	.0778	.0780
Rumania	Leu	.007022	.007042	.007019	.0070	.006997	.006997
Serbia	Dinar	.0146	.014683	.014643	.014743	.014743	.014736
Spain	Peseta	.1555	.1556	.1565	.1565	.1568	.1574
Sweden	Krona	.2562	.2565	.2565	.2563	.2560	.2562
Switzerland	Franc	.1929	.1927	.1918	.1912	.1916	.1918
Yugoslavia	Krone	.003642	.003672	.003669	.003686	.003669	.003679
Asia:							
China	Chefoo tael	.8183	.8225	.8342	.8400	.8458	.8588
Do	Hankow tael	.8183	.8225	.8342	.8400	.8458	.8588
Do	Shanghai tael	.7811	.7880	.7929	.8014	.8039	.8196
Do	Tientsin tael	.8233	.8283	.8392	.8458	.8517	.8638
Do	Hongkong dollar	.5707	.5757	.5834	.5854	.5866	.5927
Do	Mexican dollar	.5655	.5698	.5780	.5820	.5838	.5905
Do	Tientsin or Peiyang dollar.	.5817	.5892	.5967	.6008	.6038	.6088
Do	Yuan dollar	.5725	.5758	.5883	.5875	.5904	.5958
India	Rupee	.2866	.2903	.2916	.2890	.2903	.2907
Japan	Yen	.4726	.4733	.4733	.4735	.4736	.4732
Singapore (S. S.)	Dollar	.5092	.5012	.5100	.5100	.5083	.5100
North America:							
Canada	do	.986764	.988778	.989688	.989368	.990208	.990667
Cuba	Peso	.9985	.9985	.9985	.998875	.998938	.99825
Mexico	do	.4919	.491975	.491875	.491825	.49045	.488906
Newfoundland	Dollar	.984688	.9875	.9875	.987266	.988125	.988516
South America:							
Argentina	Peso (gold)	.8216	.8231	.8338	.8388	.8382	.8294
Brazil	Milreis	.1377	.1380	.1379	.1377	.1377	.1380
Uruguay	Peso	.7977	.8006	.7989	.8032	.8013	.8006

(T. D. 39132.)

Certificate of exportation.

Amendment of article 334 of the Customs Regulations of 1915.

TREASURY DEPARTMENT, *May 25, 1922.*

To Collectors of Customs and Others Concerned:

Article 334 of the Customs Regulations of 1915 is hereby amended to read as follows:

The collector may waive the production of a certificate of exportation or cancel the bond given therefor when the report of the appraiser shows affirmatively that the goods are of domestic origin provided the collector is satisfied that no drawback was paid upon exportation of the merchandise.

The bond for the production of the certificate of exportation shall be on Customs Form 7551.

The production of certificates of exportation on bags will not be waived.

(105566.) W. G. PLATT, *Acting Assistant Secretary.*

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(T. D. 39133.)

Aeronautical material or equipment for China.

Collectors instructed not to allow shipments of aeronautical material or equipment to China without permits from Department of State.

TREASURY DEPARTMENT, *May 24, 1922.*

To Collectors of Customs and Others Concerned:

Referring to T. D. 39058 of April 8, 1922, and in accordance with the advice of the Secretary of State, the department instructs collectors of customs not to allow any shipments of aeronautical material or equipment to leave ports of the United States for China except upon permits duly issued by the Department of State.

(47507.) W. G. PLATT, *Acting Assistant Secretary.*

(T. D. 39134—G. A. 8537.)

Shortage.

1. Two packages were reported by one inspector "not found" and by another "not landed." They were paid for the steamship company as lost. The claim of shortage in the absence of contradictory or explanatory evidence is sustained.

2. Although not prescribed by special statute, as in case of shortage reported by appraisers, the reports of discharging inspectors are lawfully entitled to just as much weight and credence as the reports of appraisers and, without contradiction, prevail.

3. Amended Treasury Regulation (art. 608), requiring certain notice and affidavits, does not control this case, but Treasury Regulation (art. 607) is applicable.

United States General Appraisers, New York, May 22, 1922.

In the matter of protest 944414 of Geo. Borgfeldt & Co. against the assessment of duty by the collector o customs at the port of New York.

[Reversed.]

Thomas J. Doherty for the importer.

William W. Hoppin, Assistant Attorney General (*Pelham St. George Bissell*, special attorney), for the United States.

Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers).

ADAMSON, General Appraiser: In this case the importers protest the duty assessed and paid on two cases of merchandise, Nos. 3334 and 3335.

The papers show without contradiction that the two cases in question were not landed. In fact, there are two reports by the discharging inspector, one stating that they were not found, and the other that they were short shipped.

Mr. Doherty, the attorney for the importer, testified that he examined the books of the importer which showed that the steamship company paid the importer for the two lost cases. He insists that the discharging inspector's reports of not found and not landed establish the shortage.

The Government's position is that the collector did right to assess the duty because the affidavits required by the amended regulation of the Secretary of the Treasury (art. 608) were not complied with.

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The board does not think that the case is governed by article 608 as amended. We believe that article 607 applies to this case, as follows:

No allowance will be made in the assessment of duties for lost or missing packages appearing on the entry, unless shown by the report of the discharging officer not to have been landed, * * *.

The board believes that the report of the discharging inspector, uncontradicted and in this case supported by the proof of payment by the steamship company for loss of the merchandise, establishes the shortage beyond all question. Great sanctity is claimed for any sort of a report made at any time and place by an appraiser suggesting shortage, because there is a special statute, often misconstrued and misapplied, to wit, section 2921 of the Revised Statutes. Although not concentrated in one statute, it is equally as well settled in law by ample authority that an uncontradicted report from a discharging inspector that merchandise is not landed is equally potent to prove the shortage. The official report of one sworn administrative officer as to the facts stated therein is just as good in law as the report of another similar administrative officer regardless of the different statutes by which empowered to make the reports.

The protest is sustained and the collector is directed to reliquidate the entry refunding the duty collected on the two cases in question.

(T. D. 39135.—G. A. 8538.)

Spirit levels chiefly used in transits—Mountings for surveying instruments—Blown-glass articles.

Spirit levels, each consisting of a small glass tube sealed at each end, containing a clear liquid resembling water, having a scale ground into the surface of one side, the chief use of which is as levels in surveying instruments termed transits, but which are also occasionally used in carpenters' levels and nautical instruments, are dutiable under paragraph 84 of the tariff act of 1913, under the provision for "all articles of every description, including bottles and bottle glassware, composed wholly or in chief value of glass blown either in a mold or otherwise; * * * not specially provided for," rather than under the provision in paragraph 94 of the same act for "Surveying instruments, * * * and frames and mountings for the same." United States *v.* Sheldon (9 Ct. Cust. Appls. 153; T. D. 37994); United States *v.* International Forwarding Co. (Id. 156; T. D. 37995); United States *v.* American Express Co. (7 Id. 169; T. D. 36490); Henry Bischoff & Co.'s case, G. A. 7342 (T. D. 32344; 22 Treas. Dec. 465); A. W. Chesterton Co.'s case, G. A. 7399 (T. D. 32882; 23 Treas. Dec. 287) cited.

United States General Appraisers, New York, May 24, 1922.

In the matter of protests 940758, etc., of A. Lietz Co. against the assessment of duty by the collector of customs at the port of San Francisco.

[Affirmed.]

Frank L. Lawrence (*Martin T. Baldwin* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence* and *Bernard Hahn*, special attorneys), for the United States.

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Before Board 1 (McCLELLAND, SULLIVAN, and BROWN, General Appraisers; BROWN, G. A., dissenting).

SULLIVAN, General Appraiser: The official sample of the merchandise in question consists of a small blown-glass tube, sealed at each end, containing a clear liquid resembling water. Cut or ground into one side of the article and rendered more clear and distinct by the application of black paint or varnish, is a small scale. The testimony is that one or more of these articles are mounted on transits (surveying instruments) and they are used thereon as levels. This is shown to be the *chief* use of the article, although there is also a use for these levels, in the smaller sizes, in carpenters' levels. The articles in question, however, were all imported, both large and small sizes, to be mounted or attached to transits.

This merchandise was assessed with duty at 45 per cent ad valorem under that portion of paragraph 84 of the tariff act of 1913 which provides for "all articles of every description, including bottles and bottle glassware, composed wholly or in chief value of glass blown either in a mold or otherwise; * * * not specially provided for."

The protests claim it dutiable at 25 per cent ad valorem under paragraph 94, which provides for (among other things) "Surveying instruments * * * and frames and mountings for the same."

There is also a claim in the protests that the merchandise is dutiable at 30 per cent ad valorem under paragraph 95 as manufactures of glass not specially provided for.

These claims of the protestant cover all the merchandise on the invoices in both protests. It was testified that the sample was representative of all the levels in question, excepting that "They vary in length and in sensibility," and that they were all bought to be used for the same purpose, viz, as levels on transits. Their use, in the words of the witness for the protestant, is as follows:

Each surveying instrument, or transit as they call it, is provided with a telescope level and two plate levels. These are mounted into brass tubes, screwed or made fast with plaster of Paris, and screwed to the telescope and base plate of the instrument by screws. They are used for the purpose of adjusting the instrument and with whatever purpose they contemplate using them for.

The witness testified that the first three sizes on the invoice in protest 940758, also the first three sizes on the invoice in protest 940759, are adapted for use as carpenters' levels; but that all the sizes specified on the invoices are used in transits, and that their use as carpenters' levels is very small.

Q. Are you quite certain that the small ones are used much more in number in making transits than making carpenters' levels?—A. We use more smaller ones than the large one. A transit has two small ones and one large one.

Q. I am speaking of the use of the small ones as a whole. Would the chief use be for making transits or carpenters' levels?—A. For transits.

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It is evident that the chief use of these levels is in transits.

An inspection of the sample and the evidence convinces us that the merchandise is a completed article in itself, and that it is a blown glass article. It will be observed that the wording of the provision in paragraph 84, under which the collector classified it, is "*all* articles of *every* description, * * * composed wholly or in chief value of glass blown either in a mold or otherwise; * * * not specially provided for." The presumption arising from the collector's classification that it is an article wholly or in chief value of blown glass, has not been contradicted by the protestant. Such presumption has therefore become a fact. Is this classification more applicable to this merchandise, or should it be classified under the provision in paragraph 94 providing for *mountings* for surveying instruments?

What is the meaning of the word "mounting?" It is testified by the protestant that these levels are "*mounted* into brass tubes, screwed or made fast with plaster of Paris, and screwed to the telescope and base plate of the instrument by screws." It is further shown by the testimony that these articles have other uses. Whether such uses are minor uses or not is immaterial. The witness testified:

> They use them in carpenters' levels, surveying instruments, and various nautical instruments. * * * A carpenter's level—they usually *mount* it right into the wood. They have a certain place gouged out, and they insert the level in that.

It will be noticed by the testimony of this witness, the only one testifying, that he uses the words "mounted" and "mount" in describing the placing of this instrument in the transit or carpenter's level. We could very well strike out the word "mount" and use the word "place;" the sense of the witness's testimony would not be changed In our opinion the placing of this level in the transit or in the wooden part of a carpenter's level is not mounting. The "mounting" is the transit itself or the wood of the carpenter's level, not the completed glass level before us. It would seem this conclusion is irresistible. This level is held in place by mountings. It, of itself, is not a mounting, and can not be. It may be equipment but not mounting.

The cases cited by counsel for the protestant are not applicable. In United States *v.* Sheldon (9 Ct. Cust. Appls. 153; T. D. 37994), the merchandise involved consisted of mother-of-pearl staves and name rings for mountings or embellishment of opera glasses. This article is not of that class. It has other uses than in connection with a transit.

"Mounting" as defined by Webster's New International Dictionary is "That which serves as a mount or by which anything is prepared or equipped for use, or set off to advantage; equipment; embellishment; setting; as the mounting, or nonoptical parts (pier axes, circles, tubes, etc.) of a telescope, sword, diamond, gun, or picture."

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In the New Standard Dictionary it is defined as "That by means of which anything is prepared for use, preservation, examination, exhibition, or ornament; equipment; embellishment."

The definition in the Oxford Dictionary is "Something that serves as a mount, support, or setting to anything."

These definitions are not applicable to the merchandise under consideration.

In United States *v.* International Forwarding Co. (9 id. 156; T. D. 37995) the merchandise involved consisted of certain polariscopes and polariscope tubes. The polariscope tubes were glass tubes in varying lengths, for holding liquids to be examined in polariscopes in polarized light. They were indispensable to the use of the polariscope. It was held by the court that the tube was a mounting for an optical instrument.

In United States *v.* American Express Co. (7 Ct. Cust. Appls. 169; T. D. 36490) the merchandise under consideration consisted of parts of a class of moving-picture machines known by the designation of "pathescopes," and the question was whether they were dutiable as frames and mountings for optical instruments under paragraph 93, or as frames and mountings for photographic and projection lenses under paragraph 94. The court held them dutiable under the latter paragraph, and then gave a restricted meaning to "frames and mountings" which in our judgment is applicable to the case at bar. The court said:

> If that restricted meaning, however, is given to the terms "frames" and "mountings" when applied to projection lenses, the same restricted meaning must be given to them when applied to the surveying instruments and telescopes provided for in the same paragraph, and that we do not think can be done, inasmuch as surveying instruments and telescopes are certainly something more than mere lenses. * * * If frames and mountings for surveying instruments and telescopes mean the supporting structure and certain adjuncts of those instruments required for their use, then they must mean the supporting structure and certain adjuncts of a projection lens required for its use.

It would seem that the frames and mountings as thus construed by the court refer practically to the supporting structures and the adjuncts thereof. The merchandise at bar does not fall in that class. It is not a supporting structure, nor an adjunct thereof. It is placed in the structure, and supported by the metal of the transit or the wood of the carpenter's level, it being set into and becoming a part thereof.

What we consider "mountings" are the metal parts of the transit holding these levels, and the wooden part of the carpenter's levels; not the levels now under consideration.

In Henry Bischoff & Co.'s case, G. A. 7342 (T. D. 32344; 22 Treas. Dec. 465), the board held that Geissler tubes manufactured from blown glass manipulated by hand into the required form, were duti-

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able as "all articles of every description * * * composed wholly or in chief value of glass blown either in a mold or otherwise," under paragraph 98, tariff act of 1909.

The wording of the paragraph referred to in the Geissler tube case is practically that of the paragraph under which the merchandise in question in the case at bar was assessed.

In A. W. Chesterton Co.'s case, G. A. 7399 (T. D. 32882; 23 Treas. Dec. 287), there were before the board gauge glasses produced by a process of blowing and drawing, and it was held that such glasses fell within the description of "all articles of every description * * * composed wholly or in chief value of glass, blown either in a mold or otherwise," under paragraph 98 of the tariff act of 1909.

It would seem, in the classification of this merchandise, we need not go beyond paragraph 84 itself, for in clear and unequivocal terms it describes this merchandise when it states "all articles of every description, including bottles and bottle glassware, composed wholly or in chief value of glass blown either in a mold or otherwise." That is a specific statement—a specific description—that fits the merchandise under consideration. This merchandise is unquestionably a blown-glass article complete and entire in itself. It is not the frame or mounting of a surveying instrument. It has no connection therewith. It is used entirely to ascertain whether a line or building is level. It has no optical use whatever. An instrument accomplishing the purpose of this instrument can not be the frame or mounting of a surveying instrument or transit.

We believe the collector's classification correct, and overrule the protests.

DISSENTING OPINION.

BROWN, General Appraiser: I am constrained to dissent because I believe the term "mountings" as defined by the Court of Appeals in United States *v.* International Forwarding Co. (9 Ct. Cust. Appls. 156; T. D. 37995) is broad enough to include the article in question. Nor do I think the issue in Bischoff's case, G. A. 7342 (22 Treas. Dec. 465), between two paragraphs general in their terms makes against this view; nor the different issue in Chesterton's case, G. A. 7399 (23 Treas. Dec. 287).

(T. D. 39136—G. A. 8539.)

Gold-plated metal vanity boxes chiefly carried by ladies in their hand bags.

Small, round, gold-plated covered metal boxes, the inside of the lid containing a small mirror and inlaid with mother-of-pearl on the outside, having a very ornamental and attractive appearance, used by ladies as vanity boxes to contain a small powder puff and powder or rouge, and chiefly carried by them in their hand bags,

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are dutiable under the provision in paragraph 356, act of 1913, for "articles valued above 20 cents per dozen pieces *designed* to be worn on apparel or carried on or about or attached to the person, such as and including * * * powder cases, * * * vanity cases, and like articles * * * composed of metal, whether or not enameled, washed, covered, or plated," rather than under paragraph 167 of the same act as "Articles or wares not specially provided for in this section, if composed wholly or in part of * * * gold * * * , and articles or wares plated with gold * * *."

United States General Appraisers, New York, May 26, 1922.

In the matter of protests 942121, etc., of E. A. Anderson et al. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Strauss & Hedges (*Jacob L. Klingaman* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence* and *Harry M. Farrell*, special attorneys) for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Sullivan, General Appraiser: The merchandise in question in protest 942121 is invoiced as "enamelled powder boxes." The protest is limited to this item. It was agreed that this merchandise is substantially like that covered by protest 942430, and that the two protests may be consolidated.

The collector classified this merchandise as "articles valued above 20 cents per dozen pieces *designed* to be worn on apparel or carried on or about or attached to the person, such as and including buckles, * * * powder cases, * * * vanity cases, and like articles * * * composed of metal, whether or not enameled, washed, covered, or plated" and levied duty thereon as such under paragraph 356, act of 1913, at 60 per cent ad valorem.

The importers contend that this merchandise is not "*designed* to be worn on apparel or carried on or about or attached to the person" but that these articles "are placed on the dresser usually, and are usually used in a boudoir."

The claim relied on in the protests is that this merchandise is dutiable at 50 per cent ad valorem under paragraph 167 of the same act, which provides for, among other things, "Articles or wares not specially provided for in this section, if composed wholly or in part of platinum, gold, or silver, and articles or wares plated with gold or silver * * *."

Exhibit 1 is the official sample of the merchandise in question. It consists of a round gold-plated metal box having a close-fitting lid inlaid with mother-of-pearl or abalone shell. Set into the inside of the lid is a mirror. This sample is 1½ inches in diameter and five-eighths of an inch in thickness when the lid is closed.

The single witness testifying on behalf of the importers stated this merchandise was not *designed* to be worn on apparel or carried on or

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about the person, but was intended to be used on a lady's dresser in her boudoir. To substantiate this contention the importers offered in evidence a square leather-covered box, lined with light-blue satin, containing a bottle of perfume, a gold-plated metal lipstick box, containing a lipstick, and a box like Exhibit 1 containing a powder puff and some rouge. Importers' counsel stated this was introduced to show the use of the imported commodity. Government counsel objected to its being offered to show the use of the commodity, stating that at best it could merely show how the article is sometimes offered for sale or packed for sale. The board admitted it in evidence for what it may be worth, and the same was marked "Illustrative Exhibit A." This exhibit is rectangular in shape, 6 inches in length, 4¾ inches in width, and 1¾ inches in thickness. Importers' witness testified it was designed "as a fancy packing for distributing the different articles. They are placed on the dresser usually, and are usually used in a boudoir."

On cross-examination the witness testified that occasionally he sold Exhibit 1 separately, and that these sales were at wholesale. He testified when sold separately they were sometimes fitted with powder puff and rouge and sometimes empty, but generally with the powder, rouge, and puff. He testified that in his opinion these were not *designed* to be carried on the person, for the reason that "a woman in carrying a so-called vanity case or powder case would carry one with a hinge on it. This box here, for instance, will open easily, and if it has rouge in it, which is a bright color, it would injure the clothing or hand bag or gloves, and it seems to me a box to be carried on the person or about the person should have a hinge on it. This, you see, can come open very easily. * * * I would say in the majority of the cases that I see to-day in hand bags they are equipped with hinges."

The Government then introduced six witnesses, all of whom contradicted the importers' witness as to the use of this article, by testifying it was carried by ladies in their hand bags. Three of these witnesses were ladies in the employ of the Government, who actually carried similar articles in their hand bags. The others had seen these articles so used, and had sold them for such use.

One of these witnesses, Mr. Gœrtz, testified (p. 19, minutes) he manufactured similar articles as fittings for hand bags, and that the finish of the article indicates its use as something to be carried on or about the person.

Q. Why do you say that?—A. Why there is an effort of refinement, and there is an effort to make the general appearance conform to articles which usually are carried in the same manner, such as frames for bags, or fittings for bags. * * * A dressing table device would usually be of glass and sterling silver perhaps, and then in much larger volume. (P. 20, minutes.)

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The witness Kaiden testified (pp. 33, 34, and 35, minutes):

They are designed for the very purpose we are using them; that is, to put compacts in them, so that the young ladies can carry them with them from place to place and use them as they want them. * * * In the first place, these packages are originally designed for its compactness; it is small; previously large cumbersome boxes were used, and the young ladies found it to be difficult to be carried in their purses. They have to carry them on or about their person, and consequently people have begun to look around for smaller packages. * * * The very fact that they are finished neatly would also prove that they are being carried around. Young ladies would not accept anything unless it would look fairly well. * * * A young lady would not be as particular about a box of powder that she takes and puts in her boudoir, as nobody will see it, but these packages she takes along and she wants it fairly presentable. * * * It is too small in the first place for the dressing table. We use boxes which are probably ten times the size. They are considerably larger, and they are cheaper. They are more easily accessible. * * * They are metal as well as paper.

Unquestionably this merchandise falls within the provision of paragraph 356 and the collector's action is amply sustained.

The protests are overruled.

(T. D. 39137.)

No consul.

No consul located at the island of Grand Manan.

TREASURY DEPARTMENT, *May 29, 1922.*

To Collectors of Customs and Others Concerned:

The Secretary of State has informed this department that Grand Manan has been placed on the "no consul" list.

Invoices, therefore, certified pursuant to the provisions of section 2844 of the Revised Statutes for Grand Manan may be accepted by collectors of customs.

(64064.) EDWARD CLIFFORD, *Assistant Secretary.*

(T. D. 39138.)

Foreign currencies—Rates of exchange.

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), emergency tariff act of May 27, 1921.

TREASURY DEPARTMENT, *June 5, 1922.*

To Collectors of Customs and Others Concerned:

The appended table of the values of certain foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), act of May 27, 1921, during the period from May 19 to June 1, both inclusive, is published for the information of collectors of customs and others concerned.

(103512.) EDWARD CLIFFORD, *Assistant Secretary.*

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Values of foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), emergency tariff act of May 27, 1921.

PERIOD MAY 19 TO 25, 1922, INCLUSIVE.

Country.	Name of currency.	May 19.	May 20.	May 22.	May 23.	May 24.	May 25.
Europe:							
Austria	Krone	$0.000104	$0.000103	$0.000102	$0.000101	$0.000102	$0.000102
Belgium	Franc	.0828	.0830	.0827	.0835	.0838	.0844
Bulgaria	Lev	.006942	.00709	.007117	.0071	.00705	.007183
Czechoslovakia	Krone	.019142	.019078	.019008	.018964	.019064	.019117
Denmark	do	.213	.2132	.2132	.2133	.2150	.2175
England	Pound sterling	4.4494	4.4502	4.4492	4.4500	4.4506	4.4502
Finland	Markka	.020681	.020794	.020781	.020838	.02085	.020844
France	Franc	.0908	.0906	.0897	.0905	.0906	.0914
Germany	Reichsmark	.003355	.003288	.003165	.003366	.003402	.003491
Greece	Drachma	.0417	.0418	.0417	.0418	.0417	.0417
Holland	Guilder	.3878	.3881	.3883	.3885	.3887	.3886
Hungary	Krone	.001278	.001256	.001240	.001190	.001188	.001193
Italy	Lira	.0511	.0511	.0508	.0514	.0519	.0525
Norway	Krone	.1852	.1836	.1807	.1819	.1820	.1829
Poland	Mark	.000248	.000248	.000245	.000246	.000250	.000246
Portugal	Escudo	.0778	.0783	.0777	.0779	.0778	.0768
Rumania	Leu	.006977	.006947	.006963	.006927	.006906	.006903
Serbia	Dinar	.014607	.0145	.014521	.014371	.014414	.014421
Spain	Peseta	.1578	.1590	.1600	.1595	.1593	.1583
Sweden	Krona	.2571	.2575	.2595	.2583	.2579	.2583
Switzerland	Franc	.1912	.1907	.1906	.1908	1907	.1907
Yugoslavia	Krone	.003649	.003619	.003613	.003586	.003593	.003604
Asia:							
China	Chefoo tael	.8458	.8400	.8517	.8467	.8325	.8400
Do	Hankow tael	.8458	.8400	.8517	.8467	.8325	.8400
Do	Shanghai tael	.8107	.8086	.8136	.8052	.8000	.7996
Do	Tientsin tael	.8492	.8450	.8567	.8500	.8367	.8442
Do	Hongkong dollar	.5877	.5908	.5957	.5852	.5833	.5839
Do	Mexican dollar	.5865	.5883	.5905	.5898	.5825	.5795
Do	Tientsin or Peiyang dollar	.6025	.6058	.6083	.5992	.5925	.5967
Do	Yuan dollar	.5925	.5925	.5967	.5892	.5825	.5858
India	Rupee	.2901	.2902	.2903	.2915	.2913	.2914
Japan	Yen	.4737	.4736	.4728	.4725	.4739	.4742
Singapore (S. S.)	Dollar	.5100	.5100	.5100	.5100	.5083	.5100
North America:							
Canada	do	.990208	.990486	.990664	.991181	.990521	.990794
Cuba	Peso	.998625	.99875	.998594	.9990	.998625	.9985
Mexico	do	.4894	.488875	.489375	.489688	.489425	.489531
Newfoundland	Dollar	.987656	.987969	.988359	.988906	.988125	.988438
South America:							
Argentina	Peso (gold)	.8288	.8226	.8250	.8251	.8244	.8241
Brazil	Milreis	.1373	1375	.1379	.1379	.1373	.1379
Uruguay	Peso	.8013	.7988	.8040	.8000	.8000	.8003

PERIOD MAY 26 TO JUNE 1, 1922, INCLUSIVE.

Country.	Name of currency.	May 26.	May 27.	May 29.	May 31.	June 1.
Europe:						
Austria	Krone	$0.000103	$0.000102	$0.000102	$0.000095	$0.000098
Belgium	Franc	.0843	.0842	.0845	.0844	.0841
Bulgaria	Lev	.0072	.007267	.007183	.007175	.007096
Czechoslovakia	Krone	.019164	.019206	.019236	.019253	.0193
Denmark	do	.2186	.2179	.2185	.2192	.2180
England	Pound sterling	4.4498	4.4501	4.4500	4.4500	4.4513
Finland	Markka	.020719	.0208	.020863	.021038	.021031
France	Franc	.0912	.0911	.0913	.0912	.0910
Germany	Reichsmark	.003440	.003541	.003613	.003639	.003740
Greece	Drachma	.0417	.0416	.0416	.0416	.0416
Holland	Guilder	.3889	.3897	.3904	.3886	.3871
Hungary	Krone	.0012	.001217	.001214	.001211	.001218
Italy	Lira	.0526	.0525	.0527	.0523	.0520
Norway	Krone	.1830	.1817	.1799	.1802	.1782
Poland	Mark	.000244	.000246	.000245	.000247	.000249
Portugal	Escudo	.0768	.0775	.0772	.0768	.0762
Rumania	Leu	.006884	.006881	.006878	.006872	.006869
Serbia	Dinar	.0144	.014457	.014414	.014382	.014343
Spain	Peseta	.1578	.1580	.1579	.1579	.1577
Sweden	Krona	.2582	.2584	.2585	.2589	.2593
Switzerland	Franc	.1908	.1911	.1911	.1914	.1913
Yugoslavia	Krone	.003594	.003615	.003588	.003594	.00359

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Values of foreign currencies, etc.—Continued.

PERIOD MAY 26 TO JUNE 1, 1922, INCLUSIVE—continued.

Country.	Name of currency.	May 26.	May 27.	May 29.	May 31.	June 1.
Asia:						
China	Chefoo tael	$0.8367	$0.8350	$0.8400	$0.8392	$0.8283
Do	Hankow tael	.8367	.8350	.8400	.8392	.8283
Do	Shanghai tael	.7957	.7950	.7977	.7982	.7939
Do	Tientsin tael	.8425	.8383	.8433	.8454	.8308
Do	Hongkong dollar	.5843	.5833	.5804	.5830	.5818
Do	Mexican dollar	.5823	.5795	.5793	.5810	.575
Do	Tientsin or Peiyang dollar.	.5988	.5875	.5879	.5975	.5917
Do	Yuan dollar	5875	.5750	.5850	.5883	.5825
India	Rupee	.2910	.2914	.2909	.2909	2908
Japan	Yen	.4744	.4753	.4745	.4745	.4750
Singapore (S. S.)	Dollar	.5083	.5100	.5108	.5058	.5100
North America:						
Canada	do	.990243	.989727	.989965	.990139	.990104
Cuba	Peso	.998376	.99875	.998594	.998438	.998906
Mexico	do	.488938	.488675	.48735	.488281	.487188
Newfoundland	Dollar	.9875	.987109	.987109	.987969	.987891
South America:						
Argentina	Peso (gold)	.8238	.8220	.8231	.8225	.8232
Brazil	Milreis	.1374	.1372	.1373	.1371	.1373
Uruguay	Peso	.7990	.7989	.8006	.8025	.8056

(T. D. 39139.)

Antidumping act, 1921—Finding by the Secretary of the Treasury.

The Secretary of the Treasury makes finding under section 201 (*a*), antidumping act, 1921, of dumping in the case of fountain syringes, unfinished, and without fittings, imported from Canada.

TREASURY DEPARTMENT, *May 26, 1922.*

To Collectors of Customs and Others Concerned:

Section 201 (*a*) of the antidumping act, 1921, provides as follows:

SEC. 201. (*a*) That whenever the Secretary of the Treasury (hereinafter in this act called the "Secretary"), after such investigation as he deems necessary, finds that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation into the United States of a class or kind of foreign merchandise, and that merchandise of such class or kind is being sold or is likely to be sold in the United States or elsewhere at less than its fair value, then he shall make such finding public to the extent he deems necessary, together with a description of the class or kind of merchandise to which it applies in such detail as may be necessary for the guidance of the appraising officers.

After due investigation I find that the industry of making fountain syringes in the United States is being or is likely to be injured by reason of the importation into the United States of fountain syringes unfinished, and without fittings, imported from Canada, and that such merchandise is sold or is likely to be sold in the United States at less than its fair value.

(106085.) EDWARD CLIFFORD, *Assistant Secretary.*

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(T. D. 39140.)

Drawback.

Synopsis of drawback decisions issued between May 8 and June 3, 1922, inclusive.

(A) *Fruit, canned.*—Produced by the San Francisco Packing Co., of San Francisco, Calif., with the use of imported refined sugar or refined sugar produced wholly or in part from imported raw sugar.

Records shall be kept and methods pursued in the manner described in the sworn statement of the producer dated April 27, 1922, and at the end of each canning season there shall be filed an abstract from the factory records showing, as to the canned fruit of each kind, grade and size, the quantity packed with the use of duty-paid sugar, stated in terms of cans and cases, and the quantity of duty-paid sugar from each delivery lot used in packing such fruit. With each such abstract there shall be filed a certificate of manufacture in the form prescribed by article 866 of the Customs Regulations of 1915, showing the particulars of importation of each delivery lot of sugar used at the factory during the canning season.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the sugar used in the production of the exported canned fruit, the quantity thereof to be determined by prorating the aggregate quantity of duty-paid sugar used during the season to the canned fruit of each kind, grade and size produced, as shown by the abstract from the factory records, in accordance with a schedule which will be furnished to the collector of customs at San Francisco, Calif., at the close of each canning season by the special agent at that port, according to instructions issued to that officer under even date.

Rate effective on and after April 1, 1922.

Sworn statement dated April 27, 1922, transmitted to the collector of customs at San Francisco, Calif., on May 20, 1922. (103746–31.) (Signed) W. G. PLATT, *Acting Assistant Secretary.*

(B) *Gold leaf, ribbon.*—Manufactured by the F. W. Rauskolb Co., of Medford, Mass., with the use of imported gold leaf in sheets.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer dated May 16, 1922, showing, in the case of each lot of ribbon gold leaf manufactured for exportation with benefit of drawback, the quantity and identity of the imported gold leaf used and the number and dimensions of full width master rolls of ribbon gold leaf obtained. Where the master rolls are cut into narrower widths the record shall show the number of narrow rolls obtained and the dimensions thereof. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

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The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the imported gold leaf appearing in the exported ribbon gold leaf as shown by the abstract from the manufacturing record.

Rate effective on and after April 1, 1922.

Sworn statement dated May 16, 1922, transmitted to the collector of customs at Boston, Mass., on May 23, 1922. (104333–1.) (Signed) W. G. PLATT, *Acting Assistant Secretary.*

(C) *Hydrogen peroxide.*—Manufactured by the Langley & Michaels Co., of San Francisco, Calif., with the use of imported barium dioxide.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer dated April 25, 1922, showing, in the case of each manufacturing lot of peroxide of hydrogen manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, value, and identity of the imported barium dioxide used, the quantity of peroxide of hydrogen obtained and the quantity of waste (blanc fixe) resulting, together with the value thereof. A sworn abstract from such manufacturing record shall be filed with the drawback entry or certificate of manufacture.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the imported barium dioxide used in the manufacture of the exported peroxide of hydrogen, as shown by the abstract from the manufacturing record, less the quantity of imported material which the value of the waste will replace.

Rate effective on and after February 9, 1922.

Supplemental sworn schedules may be filed covering additional kinds of imported materials used in the manufacture of peroxide of hydrogen and upon verification of such schedules drawback may be allowed on peroxide of hydrogen manufactured in accordance therewith.

Sworn statement dated April 25, 1922, transmitted to the collector of customs at San Francisco, Calif., on May 17, 1922. (99458–2.) (Signed) EDWARD CLIFFORD, *Assistant Secretary.*

(D) *Medicinal preparations and perfumery.*—Manufactured by Joseph Personeni (Inc.), of New York, N. Y., with the use of domestic taxpaid alcohol; and on medicinal preparations manufactured by the said firm with the use of domestic taxpaid alcohol and imported refined sugar or sugar refined wholly or in part from imported raw sugar.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer dated May 10, 1922, showing, in the case of each lot of medicinal preparations or perfumery manufactured for exportation with benefit of drawback, the lot num-

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ber and date of manufacture thereof, the quantity and identity of the refined sugar and domestic alcohol used, the quantity and kind of finished product obtained, and the number and size of containers in which packed. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the tax paid on the quantity of domestic alcohol, and the duty paid, less 1 per cent thereof, on the refined sugar, used in the manufacture of the exported preparations, as shown by the abstract from the manufacturing record.

Rate effective on and after March 15, 1922.

Supplemental sworn schedules may be filed covering additional kinds of medicinal preparations, imported materials, or sizes of containers, and upon verification of such supplemental schedules drawback may be allowed on preparations manufactured and packed in accordance therewith.

Sworn statement dated May 10, 1922, transmitted to the collector of customs at New York, N. Y., on May 18, 1922. (101560–32.) (Signed) EDWARD CLIFFORD, *Assistant Secretary.*

(E) *Molasses.*—Produced by Penick & Ford (Ltd.), of New Orleans, La., with the use of imported molasses by blending with domestic molasses in varying proportions.

A record shall be kept in the manner described in the sworn statement of the producer, dated April 14, 1922, showing, in the case of each lot of blended molasses produced for exportation with benefit of drawback, the lot number and date of production thereof, the quantity and identity of the imported molasses used, the quantity of domestic molasses used, and the quantity of blended molasses obtained. A sworn abstract from such record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the imported molasses used in the production of the exported blended molasses as shown by the abstract from the record provided for above.

Rate effective on and after January 7, 1922.

Sworn statement dated April 14, 1922, transmitted to the collector of customs at New Orleans, La., on May 12, 1922. (109866.) (Signed) EDWARD CLIFFORD, *Assistant Secretary.*

(F) *Salad, fruit, canned.*—Produced by the San Francisco Packing Co., of San Francisco, Calif., with the use of imported refined sugar or refined sugar produced wholly or in part from imported raw sugar.

Records shall be kept and methods pursued as described in the sworn statement of the producer, dated April 27, 1922, and at the

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end of each period of one month there shall be filed an abstract from the factory records showing the number of cans and cases of fruit salad of each size packed during the period with the use of duty-paid sugar and the quantity of sugar from each delivery lot used. With such abstract there shall be filed a certificate of manufacture identifying such sugar with the import entries covering the same.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the sugar used in packing the exported fruit salad, as shown by the abstract from the manufacturing record.

Rate effective on and after April 1, 1922.

Sworn statement dated April 27, 1922, transmitted to the collector of customs at San Francisco, Calif., on May 20, 1922. (103746–31.) (Signed) W. G. PLATT, *Acting Assistant Secretary.*

(G) *Walnuts in the shell; sorted, cleaned, and polished.*—Produced from imported walnuts by F. E. Kadelburg (Inc.), of Brooklyn, N. Y., for the account of William A. Camp & Co., of New York, N. Y., or for the account of others.

Records shall be kept in the manner described in the sworn statement of the producer, dated May 11, 1922, showing, in the case of each lot of sorted, cleaned, and polished walnuts produced for exportation with benefit of drawback, the lot number and date of production thereof, the quantity of imported nuts used and the quantity of sorted, cleaned, and polished nuts obtained. A sworn abstract from such records shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the imported nuts used in the production of the exported sorted, cleaned, and polished nuts, as shown by the abstract from the records provided for above.

Rate effective on and after February 11, 1922.

Sworn statement of William A. Camp & Co., dated May 10, 1922, and sworn statement of F. E. Kadelburg (Inc.), dated May 11, 1922, transmitted to the collector of customs at New York, N. Y., on June 1, 1922. (102646–1.) (Signed) EDWARD CLIFFORD, *Assistant Secretary.*

(H) *Wool, pulled, washed, and graded.*—T. D. 39001 (H) of January 27, 1922, providing for the payment of drawback on washed and graded wool produced by the Helburn, Thompson Co., of Johnstown, N. Y., for the account of Louis Meyer & Sons, of New York, N. Y., and others, from wool pulled from imported skins by Karg Bros., of Johnstown, N, Y., extended to provide for drawback on pulled, washed, and graded wool produced by the Helburn, Thompson Co. for its own account from imported wool on skins.

Extension effective on and after April 27, 1922.

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Sworn statement of the Helburn, Thompson Co., dated May 10, 1922, transmitted to the collector of customs at New York, N. Y., on June 2, 1922. (100768–6.) (Signed) EDWARD CLIFFORD, *Assistant Secretary.*

(T. D. 39141.)

Cellophane and visca braids.

ROLLAND FRÈRES (INC.) *v.* UNITED STATES (NO. 2135).

1. IDENTITY OF MATERIAL IS NOT SIMILITUDE.

The similitude paragraph of the tariff act contemplates similarity, not identity of material.

2. CONSTRUCTION, PARAGRAPH 319, TARIFF ACT OF 1913—ARTIFICIAL SILK—HYDROCELLULOSE.

Paragraph 319, tariff act of 1913, subjects to duty artificial silk; that is to say, hydrocellulose in the form of yarns, threads, or filaments, and of articles or fabrics in chief value of such yarns, threads, fibers, or filaments. Congress having seen fit to provide for hydrocellulose in its condition as artificial silk, it can not be held that such a provision was intended to cover by similitude of material hydrocellulose not in that condition.

3. SIMILITUDE—ARTIFICIAL SILK—CELLOPHANE—VISCA.

There is no similitude within the meaning of the tariff act between hydrocellulose in narrow bands, strips, or ribbons (cellophane and visca) and hydrocellulose in the form of yarn, threads, fibers, or filaments (artificial silk).

4. MANUFACTURES OF CELLOPHANE AND VISCA.

Sheets, bands, and ribbons of visca or cellophane, whether crimped or not, are dutiable by similitude with gelatin manufactures under paragraph 34, tariff act of 1913, rather than with artificial silk manufactures under paragraph 319. Braids, plaits, and hats of visca or cellophane are dutiable by similitude with such articles made of straw under paragraph 335, rather than with manufactures of artificial silk under paragraph 319. Other hat materials made by winding cellophane bands around long strips of cloth or paper are dutiable at 25 per cent ad valorem by similitude with either manufactures of gelatin under paragraph 34 or manufactures of straw under paragraph 368. Partly manufactured hats composed of cellophane braids, plaits, or bands wound around cloth or paper are dutiable by similitude with the hats of straw, chip, grass, or palm leaf of paragraph 335. Millinery material made of cellophane strips held together by cotton or artificial silk threads are dutiable at 25 per cent ad valorem by similitude with either manufactures of gelatin under paragraph 34 or manufactures of straw under paragraph 368. Artificial flowers of cellophane are dutiable as artificial flowers under paragraph 347.

United States Court of Customs Appeals, May 26, 1922.

APPEAL from Board of United States General Appraisers, G. A. 8459 (T. D. 38816).

[Modified.]

Brooks & Brooks for appellant.

William W. Hoppin, Assistant Attorney General (*Samuel Isenschmid*, special attorney, of counsel), for the United States.

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[Oral argument February 23, 1922, by Mr. Place and Mr. Isenschmid.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

SMITH, Judge, delivered the opinion of the court:

"Tams," crowns, hats, hat braids, "all-over" braids, bands, strips, sheets, flowers, and ornaments, some made of a material called "visca" and others of "cellophane," were classified by the collector of customs either as filaments of artificial silk or as articles composed in chief value of yarns, threads, filaments, or fibers of artificial silk. The articles classified as "artificial silk in the form of filaments," were assessed for duty at 35 per cent ad valorem under paragraph 319 of the tariff act of 1913, and those classified as composed in chief value of yarns, threads, filaments, or fibers of artificial silk, were subjected to the duty of 60 per cent ad valorem prescribed by that paragraph. Paragraph 319 in so far as it is pertinent to the case reads as follows:

319. Yarns, threads, filaments of artificial or imitation silk, * * * by whatever name known, and by whatever process made, 35 per cent ad valorem; beltings, cords, tassels, ribbons, or other articles or fabrics composed wholly or in chief value of yarns, threads, filaments, or fibers of artificial or imitation silk * * * or of yarns, threads, filaments or fibers of artificial or imitation silk, * * * by whatever name known, and by whatever process made, 60 per cent ad valorem.

The importer protested first, that directly or by similitude the goods covered by typical protest 934448 were dutiable either at 15 per cent ad valorem under paragraph 385 as nonenumerated manufactured articles, or at 25 per cent ad valorem under paragraph 34 as manufactures of gelatin; second, that directly or by similitude the articles covered by typical protest 936314 were dutiable (*a*) under paragraph 368 either at 15 per cent ad valorem as manufactures of palm leaf or at 20 per cent ad valorem as manufactures of chip or at 25 per cent ad valorem as manufactures of grass, straw, or weeds; (*b*) under paragraph 335 as braids or plaits or hats of straw, chip, grass, or palm leaf at 15 per cent, 20 per cent, or 25 per cent ad valorem; (*c*) under paragraph 385 as nonenumerated manufactures at 15 per cent ad valorem; third, that directly or by similitude the goods covered by typical protest 937803 were dutiable (*a*) under the paragraphs already referred to, (*b*) under paragraph 25 at 25 per cent as compounds of pyroxylin or other cellulose esters in blocks, sheets, rods, tubes, or other forms not wholly or partly polished, (*c*) under paragraph 150 at 40 per cent ad valorem as fabrics, ribbons, beltings, toys, or other articles, made wholly or in chief value of tinsel, lame, or lahn. The paragraphs upon which the importer relied were, in typical protest 934448, paragraphs 34 and 385; in typical protest 936314, paragraphs 335, 368, and 385; and in typical protest 937803, paragraphs 34, 335, and 385. Said paragraphs, in so far as pertinent, are as follows:

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34. * * * manufactures of gelatin * * * 25 per centum ad valorem * * *.

335. Braids, plaits * * * composed wholly or in chief value of straw, chip, grass, palm leaf * * * suitable for making or ornamenting hats, bonnets, or hoods * * * if bleached, dyed, colored, or stained, 20 per centum ad valorem; hats, bonnets, and hoods composed wholly or in chief value of straw, chip, grass, palm leaf * * * whether wholly or partly manufactured, but not blocked or trimmed, 25 per centum ad valorem.

368. Manufactures of * * * grass, straw, and weeds, 25 per centum ad valorem; * * *.

385. That there shall be levied, collected, and paid * * * on all articles manufactured, in whole or in part, not provided for in this section, a duty of 15 per centum ad valorem.

The importation is represented by 31 exhibits. Exhibits 1, 2, and 3 are hat braids composed chiefly of lustrous flexible flat bands of visca, about one-fourth of an inch wide, braided with chip. Exhibits 4, 5, and 24 are hat braids made of highly polished flexible bands of cellophane, and Exhibits 6, 7, 8, 9, and 10 are hat materials made by winding cellophane bands around long strips of cloth or paper. Exhibits 11 and 12 are flat cellophane strips varying in width from one twenty-fifth to one-eighth of an inch, held together and parallel to one another by weaving over and under them cotton weft threads at half-inch intervals in Exhibit 11, and at 3-inch intervals in Exhibit 12. Exhibit 13 is a strip of yellow crimped or accordion-plaited cellophane about 1¾ inches wide, apparently intended for use as a millinery trimming. Exhibits 14, 15, and 31 are sheets of cellophane which are chiefly used for wrapping candies and candy boxes. Some of the sheet cellophane is used for surgical dressings and it may be cut into narrow bands or strips for the making or braiding of articles of various kinds. Exhibit 16 is a sheet of cellophane which differs from Exhibits 14, 15, and 31 in the particular that it has been crimped or accordion-plaited, and that it is probably used only for ornamental purposes or for the manufacture of ornamental articles. Exhibits 17 to 23 are strips or bands of colored cellophane varying in width from one-eighth to 1¾ inches. Exhibits 17 to 22 are narrow enough to be braided, but Exhibit 23 appears to be too wide for that purpose. Exhibit 25 represents materials having a warp of narrow crimped cellophane strips varying in width from one-sixteenth to one-eighth of an inch and held in place by weft threads of cotton or of soft-finish artificial silk. Exhibit 26 consists of four black flexible cellophane flowerlike forms and crude imitations of leaves fastened to a cellophane band apparently designed to be used as a hat trimming. Exhibits 27 and 28 are partly manufactured ladies' hats made of materials similar to the materials represented by Exhibits 5 and 10. Exhibits 29 and 30 are artificial flowers of cellophane.

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The board sustained the protest as to Exhibits 14, 15, 16, and 31, but inasmuch as they could not determine what merchandise was of the widths represented by the exhibits, the decision of the collector as to such merchandise was left undisturbed. The board ruled that Exhibits 29 and 30 were artificial flowers dutiable under paragraph 347, and that the exhibits from 17 to 23 which were narrow enough to be braided or woven were similar in material and use to yarns, threads, or filaments of artificial silk, and therefore dutiable at 35 per cent ad valorem under paragraph 319. Such of the exhibits from 17 to 23 as were too wide to be braided or woven were held to be dutiable as nonenumerated manufactured articles under paragraph 385, but as the board was unable to determine what strips required cutting in order to be braided or woven the decision of the collector was permitted to stand.

The rest of the exhibits were held by the board to be similar in material to articles or fabrics of artificial silk and therefore dutiable at 60 per cent ad valorem under paragraph 319. From the decision of the board the importer appealed.

Artificial silk, visca, and cellophane are products of hydrocellulose and hydrocellulose is manufactured by chemically treating wood pulp, cotton, or other vegetable fiber. Wood pulp, cotton, or other vegetable fiber when treated with nitric acid becomes a cellulose nitrate and cellulose nitrate is the chemical designation of pyroxylin or gun cotton. Wood pulp, cotton, or other vegetable fiber when treated with xanthic acid becomes cellulose zanthate or "viscose." Pyroxylin and viscose are both esters, which by further chemical treatment may be converted into hydrocellulose. Hydrocellulose may also be produced by applying such chemical reagents as will precipitate it out of a cupra-ammonium solution of cellulose. The evidence establishes that hydrocellulose produced by chemically treating pyroxylin is identically the same as the hydrocellulose produced by the chemical manipulation of "viscose" and that the hydrocellulose precipitated by chemical processes out of a cupra-ammonium solution is the same as that produced from pyroxylin or "viscose," with the exception that a close analysis will disclose traces of the different chemical reagents used in producing the hydrocellulose. Artificial silk, cellophane and visca are manufactures of hydrocellulose, but whether the hydrocellulose becomes artificial silk, cellophane, or visca, depends entirely on the mechanical treatment to which it is subjected in its viscous state and the form that it finally takes. If the hydrocellulose be forced through microscopic jets into a bath which coagulates the hydrocellulose threads, fibers, or filaments thus produced, the commodity is artificial silk which may be spun, woven, knitted, or applied to any textile purpose for which cotton, wool, or true silk may be used. If the hydrocellulose be

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projected through a slit or slot and coagulated into bands or strips or rolled into or cut from sheets, it becomes cellophane or visca.

The goods which are the subject of appeal to this court, are either visca or cellophane, and as they are composed wholly of hydrocellulose they are not similar but identical in material with hydrocellulose which by manufacturing processes has been converted into artificial silk, that is to say, into yarns, threads, fibers, or filaments, and articles made of such yarns, threads, fibers, or filaments. Inasmuch as there is identity, not similarity of material, none of the visca or cellophane and none of the articles here involved, made of visca or cellophane, can be said to be dutiable by *similitude of material* to artificial silk or to articles made of artificial silk.

Paragraph 319 subjects to duty artificial silk; that is to say, hydrocellulose in the form of yarns, threads, or filaments and of articles or fabrics in chief value of such yarns, threads, fibers, or filaments. Congress having seen fit to provide for hydrocellulose in its condition as artificial silk, it can not be held that such a provision was intended to cover by similitude of material hydrocellulose not in that condition.—Schoenemann *v.* United States (119 Fed. 584, 586); Fensterer *v.* United States (1 Ct. Cust. Appls. 93, 100, 101; T. D. 31110); United States *v.* Fensterer & Ruhe (2 Ct. Cust. Appls. 368; T. D. 32094); Isler *v.* United States (5 Ct. Cust. Appls. 229–233; T. D. 34401); United States *v.* Neuman (6 Ct. Cust. Appls. 228, 229, 230; T. D. 35497); Strauss & Co. *v.* United States (2 Ct. Cust. Appls. 203; T. D. 31946); American Express Co. *v.* United States (2 Ct. Cust. Appls. 39–41; T. D. 31591).

To hold otherwise would subject a raw material, not specifically enumerated, to the duty specifically imposed on such a material when advanced to the status of a manufacture having a new name and fitted for a use for which the raw material was wholly unsuitable, a result the exact reverse of that generally sought by tariff legislation.

Whether the visca and narrow bands or strips of cellophane are similar *in use* to yarns, threads, fibers, or filaments of artificial silk depends altogether on whether such narrow bands or strips of cellophane or visca can be devoted to the uses peculiar to yarns, threads, or filaments, that is to say, to sewing, weaving, knitting, crocheting, tatting, embroidering, and needlework. See yarn, thread, filament, crochet, tat, embroider, and needlework, Standard Dictionary and Webster's Dictionary; United States *v.* Veit, Son & Co. (8 Ct. Cust. Appls. 290, 293, 294).

It is not claimed by the Government that visca and cellophane in sheets, narrow bands, strips, or ribbons, can be used for sewing, crocheting, tatting, or needlework, and the samples in evidence are convincing proof that they are not fitted for such uses. The Government does contend however, that visca and cellophane in narrow

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bands, strips, or ribbons are suitable for weaving and knitting, but the evidence submitted does not in our opinion sustain that contention.

David Metzger testified for the Government in effect that visca, cellophane, artificial horsehair, artificial silk, straw, cotton, wool, real silk, palm leaf, raffia, grass, chip, and various other materials were used for the manufacture of millinery braids, ornaments, trimmings, and novelties; *that artificial silk was a thread and that visca was a sort of a ribbon, something flat and ribbonlike;* that visca and narrow strips of cellophane may be woven, knitted, or braided, but that they are not woven or knitted in the same way as threads or yarns of artificial silk, artificial horsehair, or cotton; that visca and cellophane can not be successfully woven or knitted as a single material, but must be interwoven with warp threads of cotton, artificial silk, or like fibers or filaments by means of guides or tubes in such a way as to bind the visca or cellophane; that visca or cellophane in strips or ribbons can not be used in the same way as cotton and that in knitting if the needle were permitted to engage visca or cellophane strips, they would break and "crack right off." He pointed out that illustrative Exhibit F composed of very fine filaments spun into a very fine thread, was *artificial silk*, but that illustrative Exhibit G, which was a *very narrow strip or ribbon, was visca.* He said that visca and cellophane could not be used as embroidery threads and that if used at all in embroidery they would have to be employed for surface ornamentation. He identified the braids represented by Exhibits 1, 2, and 3 as a combination of visca and chip "fiber," and testified that cellophane and visca as used by him "mostly resembled straw."

Joseph Brandt testified for the Government that cellophane and visca were more difficult to work than metal lame and that they could not be woven into a fabric without the use of threads and then only by introducing them into the fabric by means of tubes or warp guides, called slingers.

Joseph Rubin, another witness for the Government, stated that Exhibits 1, 2, and 3 were braids composed of visca and chip and that the chip was employed in the same manner as was visca. He said that the term visca meant an *artificial silk straw* which was used as artificial straw and had a high luster and a fineness that *resembled straw.* He said that visca was a contraction for the term "visca lame," and that if knitted with cotton it could be withdrawn without destroying the skeleton fabric of cotton, but that if the cotton were withdrawn the whole fabric "would fall apart."

We think that the testimony of these three witnesses proves to a conclusion not only that visca and cellophane in narrow bands, strips, or ribbons can not be used as a single material for weaving,

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knitting, or embroidering, but that there is a pronounced difference between hydrocellulose, which by manufacturing processes is converted into filaments spun into threads or made into yarns and hydrocellulose which by other manufacturing process has been given the form of visca or of cellophane in bands, strips, or ribbons. Yarns, threads, fibers, or filaments of hydrocellulose can be used just like yarns, threads, fibers, or filaments of wool, cotton, or silk and come within the statutory designation of artificial silk. Articles made from such yarns, threads, fibers, or filaments are artificial silk articles. On the other hand, hydrocellulose in the form of bands, strips, or ribbons, unlike yarns, threads, fibers, and filaments of cotton, wool, silk, or artificial silk, can not be knitted or woven as a single material and can not be used for sewing, crocheting, tatting, embroidering, or needlework. As narrow bands, strips, or ribbons of hydrocellulose can not be used substantially in the way true yarns, threads, fibers, and filaments are used and can not accomplish substantially the results produced by the use of such yarns, threads, fibers and filaments, they are not dutiable under paragraph 319 by similitude of use to artificial silk yarns, threads, fibers, or filaments.—United States *v.* Godillot & Co. (3 Ct. Cust. Appls. 128, 130; T. D. 32382); Pickhardt *v.* Merritt (132 U. S. 252, 258).

In view of the fact that visca and strips, bands, and ribbons of cellophane can not be used as a single material for any of the purposes for which yarns, threads, fibers, or filaments of artificial silk can be and are used, it is evident that articles made of visca or of cellophane can not be like or similar to articles made of yarns, threads, or fibers of artificial silk. Both classes of material may be used for the manufacture of braids, but the braids of artificial silk differ radically in appearance, quality, texture, and use from the braids of visca or cellophane. Indeed braids of visca and cellophane far from resembling braids of artificial silk more nearly resemble braids of straw, chip, grass, or palm leaf. In fact, the samples in evidence fully establish that none of the products of visca or cellophane are like articles of artificial silk.

The testimony in the case is uncontradicted that in quality and texture cellophane in sheets very closely resembles gelatin in sheets, rendered resistant to water by manufacturing processes. Although the gelatin sheets in evidence are manufactured from animal tissue, and the exhibits of visca and of cellophane are made from vegetable fiber, both products are so much alike in appearance, quality, and texture that they appear to be of the same material, and it is difficult, if not impossible, for the lay eye to distinguish one from the other. Gelatin in sheets, like cellophane in sheets, is sold to candy manufacturers for the wrapping of candies and candy boxes. The exhibits and illustrative exhibits in evidence prove beyond question that in

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appearance, quality, and texture visca and cellophane sheets, bands, and ribbons bear a much greater resemblance to gelatin sheets, strips, bands, or ribbons than they do to artificial silk. The visca and narrow strips, bands, and ribbons of cellophane are also more like straw than artificial silk in material, quality, and the use to which they are put—indeed their resemblance to straw is so marked that they are called artificial straw. They can not, however, be subjected to duty as straw by similitude inasmuch as straw is on the free list. (Par. 386, tariff act 1913.) As visca and sheets, strips, bands, and ribbons of cellophane resemble in appearance, quality, and texture articles having the same form composed of gelatin, we think that the visca and the sheets, strips, bands, and ribbons of cellophane, whether crimped or not, covered by typical protests 934448 and 937803, are dutiable under paragraph 34 because of their similitude to manufactures of gelatin.

Visca and narrow strips, bands, or ribbons of cellophane are used in substantially the same way as straw for the manufacture of braids, plaits, hats, and other articles, and the manufactures of such visca and narrow strips, bands, or ribbons of cellophane are quite similar to manufactures of straw. As braids, plaits, and hats of straw are provided for eo nomine, however, in paragraph 335, braids, plaits, and hats made of visca or of narrow strips, bands, or ribbons of cellophane are dutiable under that paragraph by similitude. All the other articles made of visca and narrow strips, bands, or ribbons of cellophane are composed of a material similar to gelatin in appearance, quality, and texture, and to straw in material, quality, and use. Such articles are dutiable at 25 per cent ad valorem either under paragraph 34 by similitude to manufactures of gelatin or under paragraph 368 by similitude to manufactures of straw.

We find, first, that the colored hat braids represented by Exhibits 1, 2, 3, 4, 5, and 24 are dutiable at 20 per cent ad valorem under paragraph 335 because of their similitude to dyed or colored hat braids of straw; second, that the hat materials made by winding cellophane bands around long strips of cloth or paper in the manner shown by Exhibits 6, 7, 8, 9, and 10 are dutiable at 25 per cent ad valorem either by similitude to manufactures of gelatin under paragraph 34 or by similitude to manufactures of straw under paragraph 368; third, that the partly manufactured hats represented by Exhibits 27 and 28 composed of cellophane braids, cellophane plaits, or of cellophane bands wound around cloth or paper are dutiable at 25 per cent ad valorem because of their similitude to the hats provided for in paragraph 335; fourth, that the sheets and wide bands or ribbons of cellophane whether crimped or not, represented by Exhibits 13, 14, 15, 16, 23, and 31, are similar in appearance, quality, and texture to sheets, wide bands, or ribbons of gelatin and are

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therefore dutiable at 25 per cent ad valorem under paragraph 34 by reason of their similitude to gelatin made resistant to water by manufacturing processes; fifth, that the articles represented by Exhibits 11, 12, and 25 and composed of narrow strips of plain or crimped cellophane held in place by threads of cotton or of artificial silk are dutiable at 25 per cent ad valorem either under paragraph 34 by reason of their similitude to manufactures of gelatin or under paragraph 368 by reason of their similitude to manufactures of straw; sixth, that the materials represented by Exhibits 17, 18, 19, 20, 21, and 22 are dutiable at 25 per cent ad valorem under paragraph 34 by reason of their similitude in appearance, quality, and texture to narrow strips, bands, or ribbons of gelatin, made resistant to water by manufacturing processes; seventh, that the goods represented by Exhibits 26, 29, and 30 are dutiable at 60 per cent ad valorem under paragraph 347, either as artificial leaves, stems, and flowers or as articles composed in chief value of leaves, stems, and flowers.

The decision of the board overruling the protest as to Exhibits 26, 29, and 30, and the merchandise covered thereby, is affirmed. As to the rest of the exhibits and the merchandise represented thereby, the decision of the board is reversed. *Modified.*

(T. D. 39142.)

Chinese wine—Revenue act of 1918.

WING YEE CHONG & CO. *v.* UNITED STATES (No. 2143).

MEDICAL PREPARATIONS CONTAINING ALCOHOL—DISTILLED SPIRITS—CHINESE MEDICINAL WINE.

Certain Chinese wines used by the Chinese for medicinal purposes were assessed with duty by the collector under paragraph 16, tariff act of 1913, which provides for "Chemical and medicinal preparations * * * containing * * * alcohol," and also with the additional duty levied on distilled spirits by section 600 of the revenue act of 1918. The classification was as a medicinal preparation and not as distilled spirits; and the merchandise should not have been subjected to the additional duty.

United States Court of Customs Appeals, May 26, 1922.

APPEAL from Board of United States General Appraisers, G. A. 8465 (T. D. 38875).

[Reversed.]

Walden & Webster for appellants.

William W. Hoppin, Assistant Attorney General (*Samuel Isenschmid* and *Samuel M. Richardson*, special attorneys, of counsel), for the United States.

[Oral argument April 25, 1922, by Mr. Webster and Mr. Isenschmid.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

SMITH, Judge, delivered the opinion of the court:

The goods invoiced as Oo-Kok, Wo-Chork, Kop Kai, Non Sun, Wai Sang, Chun Lo, Fu Kwat, Pak Sui, Tsz Po, Tad Tar, Shum

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Yong, and Moy Lo, medicated spirits, were classified by the collector as medicinal preparations containing alcohol and were assessed for duty at 20 per cent ad valorem and at 20 cents and 40 cents per pound, according to alcoholic content, under paragraph 16 of the tariff act of 1913. In addition to this duty the collector assessed a duty of $2.20 per proof gallon under the provisions of section 600 of the revenue act of 1918, approved February 24, 1919. The pertinent parts of paragraph 16 and of section 600 are as follows:

16. Chemical and medicinal compounds and preparations * * * containing more than 20 per centum of alcohol and not more than 50 per centum of alcohol, 20 cents per pound and 20 per centum ad valorem; containing more than 50 per centum of alcohol, 40 cents per pound and 20 per centum ad valorem.

600. That there shall be levied and collected on all distilled spirits now in bond or that have been or that may be hereafter produced in or imported into the United States * * * a tax of $2.20 (or, if withdrawn for beverage purposes or for use in the manufacture or production of any article used or intended for use as a beverage, a tax of $6.40) on each proof gallon.

The board found that the collector had classified the merchandise as distilled spirits and held that there was nothing in the invoice or the record in the case which suggested "anything about compound preparations, medicinal concoctions, or anything except spirits and wines." The decision called attention to section 611 of the revenue act of 1918, and after pointing out that the act defined what wine was, how it should be treated, and how different percentages of alcohol should be regarded, ruled that "spirits imported under that law should be taxed according to proof gallon, one rate for beverage purposes and another for nonbeverage purposes." The board was apparently of the opinion that the goods were *wines* which, on account of their alcoholic content, should be classed as distilled spirits and subjected to duty as spirituous beverages. In the judgment of the board the importers had no cause for complaint inasmuch as the importation had been taxed as a nonbeverage preparation.

Whether Chinese medicated wines are medicinal preparations is a question of fact which seems to have been uniformly resolved in the negative by the board which has consistently held such wines to be distilled spirits dutiable as spirituous beverages.—Protest of Kwong Chin Chong, T. D. 14047, affirmed Kwong Ching Chong *v.* United States (119 Fed. 383); protest of Tuck, High & Co., T. D. 14411; protest Chee Ho Tong, T. D. 24675; protest Joe Kee, T. D. 25218; G. A. 1030; protest Choy Chong Wo, T. D. 31523 (Apr. 24, 1911). On June 5, 1917, however, the Treasury Department after investigation found that such medicinal preparations were "dealt in in the drug trade of China and the United States and that the Chinese have faith in them, owing to their belief that they contain a certain amount of medicinal virtue." The department accordingly directed that medicated Chinese wines be assessed for duty as medicinal

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preparations containing alcohol under paragraph 16 of the tariff act of 1913. (T. D. 37212.)

The appraiser returned the goods as medicinal preparations and after protest was made he not only reported to the collector that they had been so returned, but took the pains to state that he agreed with the claim of the importer that they were medicinal preparations. Notwithstanding the order of the Treasury Department and the return of the appraiser, the collector, had he been so minded, might have disregarded both the order and the return and classified the importation not as medicinal preparations but as distilled spirits or as wines or even as spirituous beverages, which classification the board and this court would have been obliged to accept in the absence of any evidence showing that the collector had erred in making it. But the record establishes beyond all question that the merchandise was assessed with the primary duties imposed by paragraph 16 on medicinal preparations containing alcohol and with the duties prescribed for the percentage of alcohol actually found in the merchandise. From this it follows that the medicated wines or spirits were classified as *medicinal preparations* containing alcohol and not as distilled spirits as stated by the board.

Moreover, two affidavits submitted to the collector were on the hearing before the board offered and received in evidence without objection. In one of the affidavits the goods were described as medicinal preparations and in the other as medicinal wines. Both affidavits contained a statement that the merchandise was used by Chinese in the United States for medicinal purposes. In view of the fact that the collector classified the importation, not as wines or distilled spirits, but as medicinal preparations containing alcohol, and as that finding and the affidavits in evidence are not impeached in any way, we must hold that the goods are medicinal preparations containing alcohol, and not wines or distilled spirits as found by the board. The decision is based on the facts disclosed by this particular record and is limited to the points discussed on oral argument of the appeal and in the briefs of counsel.

The decision of the Board of General Appraisers is *reversed.*

(T. D. 39143.)

Chinese wine—Revenue act of 1918.

SHUN YUEN HING & CO. *v.* UNITED STATES (No. 2145).

MEDICINAL PREPARATIONS CONTAINING ALCOHOL—DISTILLED SPIRITS—CHINESE MEDICINAL WINES.

Certain Chinese wines, used by the Chinese for medicinal purposes, were assessed with duty by the collector under paragraph 16, tariff act of 1913, which

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provides for "Chemical and medicinal preparations * * * containing * * * alcohol," and also with the additional duty levied on distilled spirits by section 600 of the revenue act of 1918. The classification was as a medicinal preparation and not as distilled spirits; and the merchandise should not have been subjected to the additional duty.—Wing Yee Chong & Co. *v.* United States (11 Ct. Cust. Appls. —; T. D. 39142) decided concurrently herewith followed.

United States Court of Customs Appeals, May 26, 1922.

APPEAL from Board of United States General Appraisers, Abstract 44554.

[Reversed.]

Frank L. Lawrence (*Martin T. Baldwin* of counsel) for appellants.

William W. Hoppin, Assistant Attorney General (*Samuel Isenschmid* and *Samuel M. Richardson*, special attorneys, of counsel), for the United States.

[Oral argument April 25, 1922, by Mr. Isenschmid.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

SMITH, Judge, delivered the opinion of the court:

In this case as in the case of Wing Yee Chong & Co. *v.* United States, suit No. 2143, this day decided, the goods were returned by the appraiser as a medicinal preparation containing alcohol. The collector classified the goods as medicinal preparations containing alcohol, and assessed them with the duty prescribed for such preparations by section 16 of the tariff act of 1913, plus the additional duty of $2.20 per proof gallon imposed on distilled spirits by section 600 of the revenue act of 1918. Two affidavits were submitted to the collector which were with the protest and other papers transmitted to the board and on the papers so transmitted the case was submitted by stipulation to the board for decision. From one of the affidavits it appeared that the merchandise was medicinal wines used for medicinal and not for beverage purposes. The other affidavit merely stated that to the best knowledge and belief of the affiant, the merchandise was used by Chinese people in the United States for medicinal purposes.

The return of the appraiser and classification of the collector in accord with the return not being impeached or contradicted in any way we must hold that the goods are medicinal preparations subject to the duties imposed by paragraph 16 of the tariff act of 1913. This ruling is based upon the facts disclosed by the record in this case and is limited to the points discussed on oral argument of the appeal and in the briefs of counsel.

The decision of the Board of General Appraisers is *reversed*.

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(T. D. 39144.)

Rugs.

UNITED STATES *v.* VANDEGRIFT & CO. (NO. 2149).

1. AXMINSTER RUGS.

Axminster rugs are of three kinds—Costly ones made by hand and requiring much time and labor for their production; less costly ones closely resembling the handmade ones, but woven quickly as single entities, on power looms; and still less costly ones cut from machine-woven lengths bearing repeated Axminster patterns.

2. CONSTRUCTION, PARAGRAPH 300, TARIFF ACT OF 1913—CARPETS—RUGS.

Paragraph 300, tariff act of 1913—"Carpets of every description, woven whole for rooms, and Oriental, Berlin, Aubusson, Axminster, and similar rugs"—is limited to carpets, carpeting and rugs which are woven as complete, separate, single entities.

3. CONSTRUCTION, PARAGRAPH 303, TARIFF ACT OF 1913—"PORTIONS OF CARPETS OR CARPETING."

Paragraph 303, tariff act of 1913, providing that "Mats, rugs for floors * * * and other portions of carpets or carpeting, * * * not specially provided for" shall bear the same rate of duty as carpets or carpeting of like character and description, provides for rugs which are not woven whole for rooms or as single entities, but which are portions of carpets or carpeting or made therefrom.

4. CHEAP MACHINEMADE AXMINSTER RUGS.

Axminster rugs made by cutting them from running machinemade lengths and binding their ends are not to be classified as Axminster rugs, under paragraph 300, tariff act of 1913, but are dutiable as Axminster carpeting under paragraph 293, by virtue of paragraph 303.—Beuttell & Sons *v.* United States (8 Ct. Cust. Appls. 409; T. D. 37666) limited.

United States Court of Customs Appeals, May 26, 1922.

APPEAL from Board of United States General Appraisers, Abstract 44587.

[Affirmed.]

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence* and *Harry M. Farrell*, special attorneys, of counsel), for the United States.

Comstock & Washburn (*J. Stuart Tompkins* of counsel) for appellees.

[Oral argument April 25, 1922, by Mr. Lawrence and Mr. Tompkins.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

SMITH, Judge, delivered the opinion of the court:

Certain rugs imported at the port of Philadelphia and classified by the collector of customs as Axminster rugs were assessed for duty at 50 per cent ad valorem under paragraph 300 of the tariff act of 1913, which paragraph reads as follows:

300. Carpets of every description, woven whole for rooms, and Oriental, Berlin, Aubusson, Axminster, and similar rugs, 50 per centum ad valorem.

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The importer protested that the rugs were dutiable at 35 per cent ad valorem under paragraph 293 by virtue of paragraph 303, which said paragraphs in so far as pertinent are as follows:

293. Aubusson, Axminster, moquette, and chenille carpets, figured or plain, and all carpets or carpeting of like character or description, 35 per centum ad valorem.

303. Mats, rugs for floors * * * and other portions of carpets or carpeting, * * * not specially provided for in this section, shall be subjected to the rate of duty herein imposed on carpets or carpeting of like character or description.

The Board of General Appraisers sustained the protest and the Government appealed.

It appears from the evidence that the rugs covered by the protest are woven in running lengths of 50 to 100 yards, which running lengths after weaving are cut at a point indicated by the design into separate rugs. The rugs cut from the running lengths are completed by binding or turning back and sewing the ends.

The Government abandoned its appeal as to the rugs made of chenille, but contends that the testimony establishes without contradiction that the rest of the rugs are *Axminster* rugs and that therefore these rugs are dutiable under paragraph 300 as assessed by the collector and not under paragraph 293 as claimed by the importer. In support of that contention the Government cites the cases of Beuttell & Sons *v.* United States (8 Ct. Cust. Appls. 409; T. D. 37666) and United States *v.* Gertzen Co. (8 Ct. Cust. Appls. 428; T. D. 37668).

The making of rugs and carpets was an established oriental industry hundreds of years before the manufacture of such articles became a part of the industrial economy of Europe. Such rugs and carpets were originally made by hand, and whether they covered the whole floor or only a part of it, they were woven as complete single entities which from center to border were the work of the weaver. The manufacture of rugs and carpets began in Spain about the end of the fifteenth century, in France in the first quarter of the sixteenth century, and in England about the beginning of the eighteenth century. The oriental rug was the handmade rug of the East, the Aubusson the handmade rug of France, and the Axminster the handmade rug of England. The invention of power looms in 1783 and the development of improvements therein by Erastus Bigelow in 1841, made possible the manufacture by steam-driven machinery of rugs and carpets, so closely resembling those made by hand that the power-loom imitations not only took the name of the original after which they were patterned, but almost drove that commodity out of the market. Hand-woven rugs and carpets are still made, however, in France, England, and Ireland, and continue to figure as commercial products. (See carpets—Encyclopedia Britannica; see carpets and rugs—New International Encyclopedia.) Bigelow's

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inventions apparently brought about the weaving of carpets in very long lengths and from that finally came, it seems, the repeating in running lengths of the patterns of rugs. Such running lengths were converted into rugs by cutting across the warp at the place indicated by a drop in the pile and then binding the ends to prevent the fraying out of the fabric. Rugs so made, like the first power-loom rugs, took the name of some handmade rug, but as they were cut from running lengths it is apparent that they were a much cheaper product than either the handmade rug or the original power-loom rug.

From this brief history of carpet and rug making it is clear that rugs made by three different processes of manufacture may nevertheless bear the same name. And so we have first, costly Axminster rugs made by hand and requiring much time and labor for their production; second, less costly Axminster rugs closely resembling the handmade rug, but woven quickly as single entities on power looms; and third, cheaper Axminster rugs cut from lengths bearing repeated Axminster patterns and woven in lengths as are power-loom Axminster carpets. Barring the pattern, rugs of the third class do not rank with either the handmade or the power-loom article woven whole or as single entities and are more like rugs made by binding short strips of carpet or by cutting lengths of carpets into strips and binding or hemming the ends of the strips.

Paragraph 300 provides for carpets "woven whole for rooms" and for oriental, Berlin, Aubusson, Axminster, and similar rugs. As the original handmade rugs bearing these names and their power-loom namesakes are woven whole, that is, as complete single entities, and as carpets "woven whole for rooms" may be called either carpets or rugs according to the floor space covered, we feel warranted in concluding that the scope of paragraph 300 is limited to carpets, carpeting, and rugs which are woven as complete separate single entities. Paragraph 303, on the other hand, provides for rugs which are not woven whole for rooms or as single entities, but which are portions of carpet or carpeting or made therefrom. As Axminster and chenille carpets are provided for by name in paragraph 293, and as the rugs under consideration are not carpets or rugs woven whole for rooms or as single entities, but are either portions of Axminster carpeting or cut from lengths of Axminster carpeting, we think the goods here involved are more specifically provided for in paragraph 293 by virtue of the provisions of paragraph 303, than they are by paragraph 300, which is limited to Axminster rugs produced by a different manufacturing process.—Beuttell *v.* United States (7 Ct. Cust. Appls. 356; T. D. 36905); Beuttell *v.* Magone (157 U. S. 164, at p. 158).

Of course, if rugs are assessed as Axminster rugs at 50 per cent ad valorem under paragraph 300 and the importer fails to show that

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such rugs were made from portions of carpets or carpetings, the assessment must stand.—Beuttell *v.* United States (8 Ct. Cust. Appls. 409–413; T. D. 37666); United States *v.* Gertzen Co. (8 Ct. Cust. Appls. 428; T. D. 37668). If, however, it be shown that such rugs were not woven whole for rooms or as separate entities, but were made from portions of carpets or carpetings, then by virtue of paragraph 303 they are subject to the rate of duty imposed by the tariff act on carpets or carpeting of like character or description.—Beuttell & Sons *v.* United States (7 Ct. Cust. Appls. 356; T. D. 36905); United States *v.* Carsón, Pirie, Scott & Co. (8 Ct. Cust. Appls. 240; T. D. 37519); Beuttell & Sons *v.* United States (8 Ct. Cust. Appls. 409; T. D. 37666); United States *v.* Snellenburg & Co. et al. (9 Ct. Cust. Appls. 59; T. D. 37939); United States *v.* Trorlicht, Duncker Carpet Co. et al. (10 Ct. Cust. Appls. 254; T. D. 38618).

The decision of the Board of General Appraisers is therefore *affirmed.*

CONCURRING OPINION.

BARBER, Judge: I concur in the foregoing opinion, but think it should be noticed that it results in limiting the views expressed in Beuttell & Sons *v.* United States (8 Ct. Cust. Appls. 409 at 420; T. D. 37666), wherein, in language of which I was the author, it was said without qualification that Axminster rugs in the statute were "regarded as properly classifiable with the most valuable rugs, such as Oriental, Aubusson, and Berlin."

The logic of the instant case is to modify the quoted statement in effect by saying that *certain* Axminster rugs were so regarded.

(T. D. 39145.)

Shortage of jewelry.

UNITED STATES *v.* LIPPMANN, SPIER & HAHN (No. 2155).

1. SECTION 2921, REVISED STATUTES—ALLOWANCE FOR SHORTAGE.

Revised Statutes section 2921 provides without ambiguity that the collector must make allowance for shortage found and reported by the appraiser in the manner therein provided. It does not clothe the collector with power to require, or cast a burden upon the importer to furnish, any other evidence. While it is true that duties accrue upon imported merchandise at the exact moment it crosses the line within the customs district, it is a physical impossibility to ascertain its exact quantity at that time, and this section should be regarded as establishing a rule to ascertain it.

2. TREASURY REGULATION MUST HARMONIZE WITH STATUTE.

Compliance with a Treasury regulation will not justify the disregarding of the mandatory provision of a statute.

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3. EVIDENCE, PRESUMPTION THAT CUSTOMS OFFICERS DISCHARGE THEIR DUTY—ALLOWANCE FOR SHORTAGE.

Where the discharging inspector reported that a case was discharged in *apparent* good order, and the appraiser reported a shortage and that the case was received on the examination floor in bad order in that the board on its bottom was broken and the cartons torn, no violence is done to the legal presumption that the customs officers discharged their duty by the theory that the missing goods were abstracted before the case crossed the customs line. In such case the collector should have made allowance for shortage as directed by Revised Statutes section 2921.

United States Court of Customs Appeals, May 26, 1922.

APPEAL from Board of United States General Appraisers, G. A. 8479 (T. D. 38911).

[Affirmed.]

William W. Hoppin, Assistant Attorney General (*Samuel Isenschmid* and *Samuel M. Richardson*, special attorneys, of counsel), for the United States.

Comstock & Washburn (*George J. Puckhafer* of counsel) for appellees.

[Oral argument April 25, 1922, by Mr. Isenschmid and Mr. Puckhafer.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

BARBER, Judge, delivered the opinion of the court:

The undisputed facts in this case are substantially as follows:

Nine cases of merchandise arrived at New York by vessel March 6, 1920. Two days later a consumption entry therefor was filed and a consumption entry permit issued.

One of the nine cases, numbered 15488, was sent to the appraisers' stores for examination and appraisal, and it was found by the appraiser that the contents were short 4¾ plus 8¾ dozen of metal boleros set with imitation precious stones.

The only question before us is, whether, under the facts hereinafter set forth, it was lawful for the collector to take duty on such shortage upon the theory that the missing articles were imported but lost after arrival.

The legality of such assessment was seasonably challenged by a protest, which was sustained by the board.

In his report to the general appraisers accompanying the papers in the case the collector stated, under date of March 29, 1921:

The discharging inspectors report that case 1548 (sic) was landed and disposed of by them while in good order. The appraiser states the package was received in bad order and that a portion of the invoiced contents was missing.

In view of the changed condition of the outer package and the absence of any report of shortage by the discharging inspectors, it was assumed that the missing articles were lost after arrival.

Duty was assessed accordingly on the invoiced and entered contents. Note T. D. 38393.

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At the hearing before the board the appraiser's answer to the protest, dated December 7, 1920, was offered by the importers and received in evidence. The material part thereof is as follows:

Case 15488 was received on the examination floor in bad order, but was not marked bad order. The board at the bottom of the case was found broken, the cartons torn, and the shortages noted on the invoice were discovered. In the opinion of this office the above shortages were due to robbery.

Upon the report made by the appraiser, probably under date of March 31, 1920, and attached to the invoice, appears the entry:

Case not marked bad order was found to have bottom board broken and evidently robbed.

On the invoice, and referring to case 15488, the shortages are noted and the following memorandum made:

Case not marked bad order and not tin lined. Board on bottom cracked and on investigation found paper cartons torn. Evidence of robbery.

On the back side of the consumption entry permit, apparently under date of June 14, 1920, is the inspector's return stating that—

The articles described herein have been landed, delivered, or disposed of as directed and in apparent good order except as noted below.

There was no notation below.

A paper is fastened to the face of the consumption entry permit on which appears an undated memorandum as follows:

The within nine (9) cases del'd from whf. in apparent good order. Records of S/S Co. agree with above & so signed for—

followed by the inspector's signature. Following this, under date of February 24, 1921, is indorsed—

Respectfully forwarded to the collector as a reply to protest No. 12676—

signed by an acting deputy surveyor. 12676 is the number of the protest in this case.

It may be noted that the collector states that the inspector reported that the case in question was landed and disposed of while in *good* order. The inspector himself states that it was in *apparent* good order. The appraiser states that it was not marked *bad* order. The entry on the invoice refers to the case as having bottom board *cracked*, while the report of examination and the answer to the protest states the board was *broken*.

The Government contends that the discharging inspector's statement or certificate, whichever it may be termed, establishes that the goods reported short were actually brought into the customs district, and therefore dutiable, notwithstanding the certificate of shortage made by the appraiser to the collector.

In this connection reference may be made to T. D. 38393, mentioned in the collector's return. It is a Treasury regulation dated

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May 3, 1920, amending article 608 of the Customs Regulations of 1915. This regulation in substance provided that allowance should be made in liquidation of duties for deficiencies in packages found by the appraiser and so certified to the collector, if the collector was satisfied that the missing articles were not included in the importation. The material part of the amendment is:

> If it appears from the official records that the deficiency is due to robbery after importation, no allowance shall be made—

and the Government claims the record here establishes such robbery.

Section 2921 of Revised Statutes provides that—

> If, on the opening of any package, a deficiency of any article shall be found, on examination by the appraisers, the same shall be certified to the collector on the invoice, and an allowance for the same be made in estimating the duties.

We regard the real question here to be whether or not this statute requires the collector to make an allowance for the shortages found by the appraiser in this case. We think it does, and that the collector had no authority to take duty upon the missing articles.

It will be noted that at no time, after the discharging inspector took charge of the merchandise on the importing vessel, was case 15488 in the custody or under the control of the importers until after the shortage had been discovered, but was constantly in customs custody.

The Government urges that it must be presumed from the report of the discharging inspector, in view of the fact that the invoice includes the merchandise found short, that it was in the case when the importation entered the customs district, hence it must have been taken therefrom thereafterwards, which taking, in view of the facts and T. D. 38393, justified the assessment of duty thereon.

The importers, however, point out, and such seems to be the fact, that no duty by statute or otherwise is cast upon the inspector to make such a detailed examination of merchandise as it is discharged from a vessel as would necessarily or probably lead to the discovery of the cracked or broken board of the case in question, or suggest that goods had been taken therefrom. Articles 96, 129, 1084, 1085, and others not necessary to specifically mention of the Customs Regulations of 1915 may be referred to in this connection.

If, when unlading, a case were in very bad condition, it would doubtless attract the inspector's attention, otherwise it would naturally be reported as "in apparent good order." We are not persuaded that the condition of case 15488, assuming it to be as found by the appraiser, was such as to require us to presume that the inspector would observe or report it. It seems reasonable that he might well have discharged his duty by reporting it as in *apparent* good order.

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It is evident that in the unlading of merchandise from a vessel a careful and particular examination of each case would be impracticable.

In other words, we attach no controlling importance to the report of the discharging inspector, so far as it relates to the package in question.

Counsel on both sides agree that it is to be presumed that the customs officials have performed their duty in all respects, and we concur therewith. Applying such presumption to this case, it is clear that the facts do not require any conclusion that the goods found short were abstracted from the case after importation. All legal presumptions are satisfied, and no crime or negligence imputed to any customs officer by holding, as did in effect the Board of General Appraisers, that presumably the shortage existed prior to importation.

It was said in substance in United States *v.* Shallus (2 Ct. Cust. Appls. 332; T. D. 32074) that while it was true that under the law duties accrued upon imported merchandise at the exact moment it crossed the line within the customs district, it was a physical impossibility to ascertain the actual quantity thereof then, and that section 2921 of Revised Statutes should be regarded as establishing a rule to ascertain their existence at that time.

We think this section provides without ambiguity that an allowance for shortage found and reported by the appraiser in the manner therein provided shall be made in estimating the duties. The section does not clothe the collector with power to require or cast a burden upon the importer to furnish any other evidence. In the case at bar the duty of the collector is prescribed by the statute. He must make an allowance.

No statute is cited and no adjudicated case referred to that establishes a different rule applicable to a case like the one now before us, and the Treasury regulation relied upon by the collector can not authorize him to disregard the mandatory provision of section 2921. See Madeira Embroidery Co. *v.* United States (9 Ct. Cust. Appls. 140; T. D. 37990); United States *v.* Park (77 Fed. 608); Balfour *v.* Sullivan (17 Fed. 231); T. D. 24334 (G. A. 5317); T. D. 24361; T. D. 24511 (G. A. 5359).

The expressed *opinion* of the appraiser that the case was robbed is not important. If it were, it might just as well relate to robbery before the package crossed the customs line as afterwards.

Manifestly this opinion is confined to the facts in this case, and thereon we think both upon reason and authority the judgment of the Board of General Appraisers must be and it is hereby *affirmed.*

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(T. D. 39146.)

Cellophane and visca braids.

ISLER & GUYE *v.* UNITED STATES (No. 2136).

1. "SIMILITUDE" AND "NONENUMERATED" PROVISIONS.

According to a well-established rule the "similitude" provisions of the tariff act take precedence over the "nonenumerated" provisions. Therefore if a given importation does not respond directly to any of the dutiable enumerations of the act, but nevertheless is capable of classification thereunder because of a similitude of material, quality, texture, or use, duty should be assessed according to that similitude, rather than under a provision for nonenumerated articles.

2. IDENTITY OF MATERIAL IS NOT SIMILITUDE.

The fact that two articles are manufactured from the same material does not constitute a similarity between them within the sense of the similitude provision.

3. RELATIVE SPECIFICITY.

The provision of paragraph 335, tariff act of 1913, for "braids * * * suitable for making or ornamenting hats, bonnets, or hoods" is more specific than that of paragraph 319 for "other articles or fabrics composed wholly or in chief value of yarns, threads, filaments, or fibers of artificial or imitation silk."

4. CELLOPHANE AND VISCA HAT BRAIDS.

Braids made of strips of cellophane and visca, to be used in making women's hats, more nearly resemble the hat braids composed of chip, grass, etc., of paragraph 335, tariff act of 1913, than they do articles composed wholly or in chief value of yarns, threads, filaments, or fibers of artificial or imitation silk, paragraph 319, and are dutiable by similitude accordingly.

United States Court of Customs Appeals, May 26, 1922.

APPEAL from Board of United States General Appraisers, Abstract 44488.

[Modified.]

Walden & Webster for appellants.

William W. Hoppin, Assistant Attorney General (*Samuel Isenschmid*, special attorney, of counsel), for the United States.

[Oral argument February 23, 1922, by Mr. Webster and Mr. Isenschmid.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

MARTIN, Judge, delivered the opinion of the court:

The merchandise involved in this case consists of certain braids composed of interlaced strips or bands of so-called cellophane and visca, designed to be used exclusively in making women's spring and summer hats. The bands are flat, are about three-fourths of an inch in width, and are not thicker than heavy paper; they are colored in various dark colors, and have a glossy appearance. The surface of the cellophane bands is quite smooth, while the visca bands are slightly grooved or striated. The basic or original material of which the bands are composed is said to be hydrocellulose, which is a material derived from wood or plant structure. It is first reduced to a semiliquid condition and chemically treated; in that condition it is homogeneous and free from filatures. It then passes through various

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operations whereby it is given certain fixed forms or shapes suitable for different uses. In one operation it is forced by pressure through minute openings and assumes the form of yarns, threads, filaments, or fibers of so-called artificial or imitation silk. By a different operation the material is forced through narrow slots and becomes ribbon-like bands similar to those composing the braids now in question. Or the plastic material may be run through rollers from which it issues in thin, wide sheets; these are cut into different forms and are used for various purposes, such as the wrapping of candy, perfumery, surgical dressings, transparent envelopes, millinery purposes, etc. In the present instance such sheets were cut as aforesaid into narrow bands or strips, and these were interwoven into braids for exclusive use in the making of women's spring and summer hats.

The appraiser described the merchandise as "hat braids composed wholly or in chief value of an artificial silk known as cellophane, visca, and pyroxylin." He returned it for duty at the rate of 60 per cent ad valorem as articles composed wholly or in chief value of yarns, threads, filaments, or fibers of artificial or imitation silk, under paragraph 319 of the tariff act of 1913. The collector thereupon assessed duty upon the articles at the rate of 60 per cent ad valorem, in accordance with that return.

The merchandise in question comprised two entries; accordingly two protests against the assessment were filed by the importers. In each protest a claim was made for assessment at the rate of 15 per cent ad valorem, under the provision for nonenumerated manufactured articles in paragraph 385 of the act. While in one of the protests an alternative claim was made for assessment at the rate of 20 per cent ad valorem, under the provision in paragraph 335 for hat braids of straw and chip, suitable for making or ornamenting hats, bonnets, or hoods. Other claims included within the protests do not figure in this appeal.

The several protests aforesaid were submitted to the board and were overruled. The board held that the merchandise indeed did not respond directly to the enumeration of "articles or fabrics composed wholly or in chief value of yarns, threads, filaments, or fibers of artificial or imitation silk," contained in paragraph 319 aforesaid, but that nevertheless the articles in question were dutiable thereunder by similitude of material, quality, texture, and use, with those described in the paragraph. Accordingly, the board sustained the collector's assessment. The importers have appealed from that decision.

The following provisions of the tariff act are here copied for convenience of reference:

319. Yarns, threads, filaments of artificial or imitation silk, or of artificial or imitation horsehair, by whatever name known, and by whatever process made, 35 per

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centum ad valorem; beltings, cords, tassels, ribbons, or other articles or fabrics composed wholly or in chief value of yarns, threads, filaments, or fibers of artificial or imitation silk or of artificial or imitation horsehair, or of yarns, threads, filaments, or fibers of artificial or imitation silk, or of artificial or imitation horsehair and india rubber, by whatever name known, and by whatever process made, 60 per centum ad valorem.

335. Braids, plaits, laces, and willow sheets or squares, composed wholly or in chief value of straw, chip, grass, palm leaf, willow, osier, rattan, real horsehair, cuba bark, or manila hemp, suitable for making or ornamenting hats, bonnets, or hoods, not bleached, dyed, colored, or stained, 15 per centum ad valorem; if bleached, dyed, colored, or stained, 20 per centum ad valorem; * * *.

According to a well-established rule, the "similitude" provisions of the tariff act take precedence over the "nonenumerated" provisions. Therefore, if a given importation does not respond directly to any of the dutiable enumerations of the act, but nevertheless is capable of classification thereunder because of a similitude of material, quality, texture, or use, duty should be assessed according to that similitude, rather than under the provision for nonenumerated articles. With this rule in mind we conclude at once that the present articles should not be relegated to the nonenumerated provisions of the act, but should be assessed with duty either under paragraph 319 or paragraph 335, supra, since the articles plainly resemble those described in each paragraph, in certain of the particulars specified in the similitude provisions. The issue therefore resolves itself into what may be called a competition between the several similitudes in question.

In coming to compare the relative degrees of resemblance between these hat braids and the articles enumerated in the competing paragraphs aforesaid, we are constrained to say that they assimilate more nearly to the hat braids composed of chip, grass, etc., which are enumerated in paragraph 335, than to the articles composed wholly or in chief value of yarns, threads, filaments, or fibers of artificial or imitation silk, as enumerated in paragraph 319.

The first point of comparison which is prescribed by the act for the determination of similitudes, relates to the "material" of which the respective articles are composed. Upon this point the board held that hydrocellulose was the basic material of which both the hat braids and the articles of artificial silk are composed, and that because of that identity of basic material the respective articles should be held to assimilate in that particular.

We think, however, that this conclusion is of doubtful application in this case. For if it be accepted that hydrocellulose is the basic material of both classes of articles, it follows that the articles are identical in point of material; and it has been held in repeated cases that such an identity does not constitute a similarity within the sense of the similitude provisions.—Strauss *v.* United States (2 Ct. Cust. Appls. 203, 205; T. D. 31946); Isler & Guye *v.* United States

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(5 id. 229, 233; T. D. 34401); Schoenemann *v.* United States (119 Fed. 584, 586). And if, upon the other hand, "yarns, threads, filaments, or fibers of artificial or imitation silk," and not the original or basic hydrocellulose itself, be accepted for similitude comparisons, as the "material" composing artificial-silk hat braids under paragraph 319, it would follow that in respect to such "material" the imported hat braids do not assimilate with artificial-silk hat braids, since their component bands or ribbons of cellophane are not capable of use in sewing, spinning, or weaving, as are yarns, threads, or filaments of artificial silk.—United States *v.* Veit (8 Ct. Cust. Appls. 290; T. D. 37540). Upon such a comparison the present cellophane bands assimilate much more nearly as "material" to strips of chip, straw, grass, etc., than yarns, threads, and filaments of artificial silk, for in respect to form and shape the broad, thin, glossy bands composing the present braids bear no resemblance whatever to yarns, threads, filaments, or fibers of any material, but bear a distinct resemblance to strips or bands of straw, grass, or chip. It appears, therefore, that the question of similitude can not be settled in this case upon the point of a resemblance in "material."

In respect to use the present articles more nearly resemble hat braids composed of straw, chip, etc., as enumerated in paragraph 335, since they are designed exclusively for use in making or ornamenting spring and summer hats and bonnets, which also is the exclusive use stipulated for the braids named in paragraph 335, and are used or applied in the same manner as these. On the other hand, the enumerations in paragraph 319 for articles composed wholly or in chief value of yarns, threads, filaments, or fibers of artificial silk, contain no limitation as to use, since the term "articles" covers and includes many different objects designed for various uses.

We may observe furthermore, that the present hat braids respond eo nomine to the applicable enumeration of paragraph 335, to wit, "braids * * * suitable for making or ornamenting hats, bonnets, or hoods," whereas, as already observed, the competing enumeration in paragraph 319 is the merely general one of "other articles or fabrics." In this respect the former provision is plainly the more specific of the two and therefore should govern the case, unless prevented by other considerations. As already observed, we do not find any such opposing consideration in the matter of component "material," and the remaining criteria which are specified in the similitude paragraph, namely, "quality" and "texture," do not seem to furnish a basis of comparison.

We conclude, therefore, that the braids in question are dutiable by similitude with braids of straw, grass, and chip, at the rate of 20 per cent ad valorem, under paragraph 335, supra. Accordingly, protest 938271, which contains such a claim, should have been sustained, and the board's decision overruling that protest is reversed

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The other protest contained in the record, to wit, No. 936990, wherein the foregoing claim was not included should have been overruled, and the board's decision to that effect is sustained. The case is accordingly remanded.

Note the decision of this court upon similar merchandise in the case of Rolland Frères *v.* United States (11 Ct. Cust. Appls. —; T. D. 39141) handed down concurrently herewith. *Modified.*

(T. D. 39147.)

Automobile body frames.

UNITED STATES *v.* CARR (No. 2161). CARR *v.* UNITED STATES (No. 2163).

1. CONSTRUCTION, PARAGRAPH 119, TARIFF ACT OF 1913—"AUTOMOBILES * * * AND AUTOMOBILE BODIES"—AIDED BY CONTEXT.

It is difficult to believe that, in the provision of paragraph 119, tariff act of 1913, for "Automobiles * * * and automobile bodies," the intention of Congress was to include automobiles so incomplete as to be wholly incapable of use or service as such, and the same conclusion may well be reached as to automobile bodies. The absence from the provision of familiar tariff phrases such as "parts thereof," "finished or unfinished," and "wholly or partly finished," would tend to the same conclusion. Moreover, to hold automobile body frames dutiable as automobile bodies would make these *unfinished* parts of automobiles dutiable at 45 per cent ad valorem, whereas the paragraph levies duty on *finished* parts at only 30 per cent.

2. SAME—AIDED BY LEGISLATIVE HISTORY—AUTOMOBILE BODIES.

Originally paragraph 119, tariff act of 1913, contained a provision for *finished* automobile bodies. The striking out of the word "finished" does not give rise to the inference that Congress intended the provision to cover unfinished automobile bodies. Rather is it more reasonable to believe that the word was stricken as surplusage.

3. AUTOMOBILE BODY FRAMES—"BODIES IN THE WHITE"—"BODIES IN PROCESS."

The skeletons or frames of automobiles bodies, known in the trade as "bodies in the white" or "bodies in process," only about half finished as to value, lacking floor boards, doors, and other important parts of automobile bodies, and needing to be painted and upholstered, are not "automobile bodies," under paragraph 119, tariff act of 1913. Their classification in the alternative as articles in chief value of metal, under paragraph 167, is stipulated by the parties.

United States Court of Customs Appeals, May 26, 1922.

CROSS-APPEALS from Board of United States General Appraisers, G. A. 8498 (T. D. 38994).

[Modified.]

William W. Hoppin, Assistant Attorney General (*Harry M. Farrell*, special attorney, of counsel), for the United States.

Comstock & Washburn (*J. Stuart Tompkins* of counsel) contra.

[Oral argument May 23, 1922, by Mr. Hoppin and Mr. Tompkins.]

Before SMITH, BARBER, and MARTIN, Associate Judges.

MARTIN, Judge, delivered the opinion of the court:

The importations involved in this case came from Canada, and were entered for duty at the port of Detroit. The appraiser de-

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scribed the merchandise as automobile bodies; duty was assessed accordingly at the rate of 45 per cent ad valorem under the eo nomine provision for automobile bodies contained in paragraph 119 of the tariff act of 1913.

The importer protested against the assessment, claiming that the imported articles were not actually automobile bodies, but only skeletons or frames for such bodies, and that these were designed to be advanced after importation to the condition of automobile bodies by means of additional material and labor. The importer contended for an assessment of 20 per cent ad valorem upon the articles as manufactures composed in chief value of metal, under paragraph 167 of the act. Other claims included within the protest need not now be mentioned.

The issue was tried upon exhibits and testimony by the Board of General Appraisers, and the protest was sustained. The board found upon the evidence that the articles as imported were not automobile bodies but only the skeletons or frames thereof, and held them to be dutiable at the rate of 15 per cent ad valorem as manufactures composed in chief value of wood, under paragraph 176 of the act. However, since that decision the parties have stipulated upon the record that the component material of chief value in the articles is in fact iron, and that in case the decision of the board should be sustained in other particulars by this court, it should nevertheless be modified so as to direct an assessment upon the articles at the rate of 20 per cent ad valorem, as manufactures of metal under paragraph 167 of the act.

It may be noted here that the decision now upon appeal follows a former decision of the board involving similar merchandise, in the case of John V. Carr, T. D. 38480 (G. A. 8369), and that the record in the former case has been regularly incorporated into that of the instant case. It may further be noted that this appeal involves three protests, and that the articles covered by one of these differed somewhat in degree of advancement from the others. This difference will be referred to again hereinafter.

The following is a copy of the paragraph under which the assessment was made:

119. Automobiles, valued at $2,000 or more, and automobile bodies, 45 per centum ad valorem; automobiles valued at less than $2,000, 30 per centum ad valorem; automobile chassis, and finished parts of automobiles, not including tires, 30 per centum ad valorem.

It may be repeated in brief that the question is whether the imported articles were dutiable under the eo nomine enumeration of automobile bodies in the foregoing paragraph. For if they were not, it is agreed that they should be assessed with duty as manufactures in chief value of iron under paragraph 167.

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A reading of the record discloses the fact that there is little if any real dispute between the parties concerning the actual physical character and condition of the dutiable articles at the time of their importation. It appears beyond question that each article consisted of the wooden frame or sill of an automobile body, with the panel posts in each side together with the panel framing, also the metal part which covers the framework. The metal included the panels, also that surrounding the tonneau and the so-called shroud (not the hood) which extends partly over the engine. This was held together by such hardware as remains unexposed in a finished body.

The articles thus described were undoubtedly designed to be completed into finished automobile bodies by means of additional material and labor, and they were fully and finally appropriated to that use and purpose. In fact they possessed no commercial value for any other purpose. But as imported they were far from being complete bodies, for they lacked various substantial parts which remained to be added after importation before they would be capable of any kind of use or service as automobile bodies. As imported they were without floor boards or toe boards, without a coil or instrument board, without doors, having neither windshield brackets nor top irons, and with the exposed hardware not yet in place. Furthermore the articles covered by two of the protests, when imported, were wholly unpainted, unlined, and untrimmed, being without cushions or upholstery of any kind; while those covered by the third protest had only one or two coats of priming paint upon them, and had the backs of both front and rear seats trimmed with fibroid, although they also lacked cushions. And, furthermore, the articles all lacked many minor finishings ordinarily to be found in automobile bodies when in service, such as robe rails, foot rails, tool compartments, battery boxes, and other fittings.

It is accordingly manifest that the dutiable articles as imported were totally incapable of actual use or service as automobile bodies, and that many and various substantial and essential parts were required to be added to them before they would become fit for that purpose; and furthermore that they required to be painted before they would be regarded commonly as completely finished automobile bodies. It appears from the testimony that the cost of finishing one of the imported articles into a completed body would about equal the cost of the article as imported; that is to say, the cost of the imported article would equal about half that of the finished body of which it would serve as a foundation. Of course these proportionate values might vary somewhat in the case of different styles of bodies or different kinds of cars.

With these facts in mind we come to inquire whether the imported articles in their condition at importation properly fall within the

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eo nomine enumeration of "automobile bodies" within the intendment of paragraph 119, and we reach the conclusion that they do not. For in order to classify them thereunder one of two things must appear, to wit, either they must be known under that name in common speech, or if not, they must be definitely, uniformly, and generally known under that name in the trade of this country.

And, first, in respect to the latter alternative, to wit, that of a commercial designation of the articles as automobile bodies, we may say that the board has found against this claim upon the evidence, and we find no ground in the record for a reversal of that decision. We will not discuss the evidence in detail, but will simply say that it fairly and fully sustains the finding of the board in that particular. It appears from the testimony that such articles as these are in the trade much more commonly, if not indeed generally, called "bodies in the white" or "bodies in process," for the manifest purpose of distinguishing them from finished bodies, and that only finished bodies bear the unqualified name of "automobile bodies." It is true that there is testimony in the record tending to show that in some shops such articles are simply called bodies, but we think that this usage was a mere abbreviation adopted in certain cases for convenience as a shop practice of limited application only.

In coming next to determine the force and effect in common speech and ordinary usage of the statutory term "automobile bodies," we think that it would naturally apply only to such bodies as are substantially completed when imported, and as are then reasonably adapted to and suitable for use and service as such. We think that this interpretation is sustained by well-recognized principles and authorities, and accordingly we hold that the articles as imported had not been advanced to the tariff status of automobile bodies.

In United States *v.* Blumenthal (51 Fed. 76) it was held that certain pearl disks, designed for ultimate use as buttons, and resembling buttons in every particular, except that they were not pierced with holes in the center, could not be classified for duty under a provision for "pearl and shell buttons," but should be assessed as "manufactures of * * * mother of pearl * * * not specially provided for." Judge Lacombe, speaking for the court, said:

> The question to be determined here is whether they are "buttons" within the language of the tariff act—language which is to be taken in its ordinary meaning, unless it appears that trade and commerce have given some specific meaning to the words employed. Now, although they may stop short of being complete buttons by a very small measure, that circumstance is immaterial; and it is also wholly immaterial with what intent the process of their manufacture was stopped at that point. * * * There is no finding of the board of appraisers as to whether the word "buttons" or the words "pearl buttons" have a distinct commercial meaning in trade and commerce. According to the usages of common speech, these articles here are not com-

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pleted buttons, because they lack the essential element of a device whereby they may be affixed to garments. * * * It seems to be that they come short of the designation "buttons," as used in the trade, and in fact have not yet been sufficiently advanced in manufacture to become the "buttons" of every-day speech.

In Knott *v.* United States (9 Ct. Cust. Appls., 93; T. D. 37948), certain carbon blocks designed for use in making carbon brushes and plates, and cut to sizes appropriate for that use, were held to be dutiable as "manufactures of carbon," rather than under a provision for "brushes, plates, * * * composed wholly or in chief value of carbon." In its decision the court said:

Accepting the foregoing testimony as correct, we think that the importations in question are certainly manufactures of carbon, but that they are merely the bulk or block material from which brushes or plates may be manufactured, and are not themselves either carbon brushes or carbon plates. They can neither be sold nor used as such articles and they do not attain to the name or character of either of them until after substantial alterations in size and condition are effected by means of domestic processing.

See also Fenton *v.* United States (1 Ct. Cust. Appls. 529; T. D. 31546) (cork floats); Mitchell Co. *v.* United States (10 id. 104; T. D. 38371) (railroad ties); Vanacker *v.* Spalding (24 Fed. 88) (toys); Vanacker *v.* Seeberger (40 Fed. 57) (toys); United States *v.* Merck (66 Fed. 251) (medicinal preparations); United States *v.* Simon (84 Fed. 154) (artificial flowers); Cowl *v.* United States (124 Fed. 475) (medicinal preparation); Hunter *v.* United States (126 Fed. 894) (paper envelopes).

We think, therefore, that the present importations, including those covered by the third protest as well as the other two, were no more than parts of automobile bodies as commonly understood, being merely the frames or skeletons upon which the bodies were to be constructed. And upon that subject we may note that the enumeration of automobile bodies contained in paragraph 119, supra, makes no provision for "parts thereof," nor for bodies "finished or unfinished," or "wholly or partly finished," which familiar phrases so frequently appear in tariff provisions designed to cover and include unfinished articles or their parts. The language of the paragraph accordingly does not comprehend such parts of bodies as those now in controversy.

Furthermore, the dutiable clause of paragraph 119 now in question reads as follows, to wit, "Automobiles, valued at $2,000 or more, and automobile bodies." It is difficult to believe that the enumeration of "automobiles" therein was designed to cover automobiles which are so incomplete as to be wholly incapable of use or service as such. And it seems manifest that the enumeration was not intended to include parts of automobiles, since a later clause of the paragraph contains an eo nomine provision for "finished parts of automobiles * * * 30 per centum ad valorem." It is not reasonable to believe

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that Congress intended to impose a duty of 45 per cent ad valorem upon unfinished parts of automobiles, and at the same time assess finished parts thereof with a duty of only 30 per cent ad valorem. The paragraph, it should be noted, also imposes duty at the rate of 30 per cent ad valorem upon automobile chassis. And again it seems reasonable to interpret the provision as including only complete chassis and not parts thereof. The rule of ejusdem generis therefore tends to sustain the conclusion which we have indicated.

We have referred in argument to the legislative history of paragraph 119, and to the amendments which altered the phraseology thereof in the course of its passage through Congress. It appears that in the bill as it passed the House, the clause containing the present enumeration read as follows, to wit: "Finished automobiles and automobile bodies, 45 per centum ad valorem;" but that when finally enacted it was made to read as above copied to wit, "Automobiles, valued at $2,000 or more, and automobile bodies, 45 per centum ad valorem." It is contended by the Government that the omission of the word "finished" from the clause as aforesaid indicates a legislative intention to include unfinished automobiles and automobile bodies within the enumeration in question. We can not agree with that argument since we think it more reasonable to believe that the word "finished" was omitted from the construction simply because it was superfluous, and that the force and effect of the provision was not altered thereby.

We have examined the authorities cited by the Government in support of its claim, especially the case of the Athenia Steel & Wire Co. *v.* United States (1 Ct. Cust. Appls. 494; T. D. 31528), but we find in them no sufficient answer to the views above expressed. The case last cited related to certain flat pieces of steel, 3 inches by one-eighth of an inch in thickness, and 30 feet long, and known commercially as "flat rods." They were assessed with duty under the enumeration of "steel in all forms and shapes not specially provided for," whereas the importer claimed assessment upon them under a provision for "wire rods." The importer's demand was based upon the claim that the steel in question was dutiable as "wire rods," because it was appropriated to use as a material for making wire. The court held against the claim, saying, "In order to bring any material for manufacture within a tariff designation which covers one of its ultimate uses it should be so far advanced by the process applied thereto in the line of that particular use that, either from an examination per se evidences of its ultimate use are made clear, or so far advanced that its utility in any of its other possible uses shall have been destroyed." The inference from this quotation might justify a finding that the articles now in question are material for the construction of automobile bodies, but it would

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not sustain the claim that they already actually are such bodies. For, while it was claimed in the Athenia case that the steel rods were wire rods, that is to say material for making wire, it was not claimed that they already were in fact wire itself. In the case of United States *v.* Lyon & Healy (4 Ct. Cust. Appls. 438; T. D. 33873), which is cited by the Government, certain violin and cello necks of wood were held to be dutiable as "parts of musical instruments." It is at once manifest that the case can bear no relation to the present question, since paragraph 119, supra, contains no provision for "parts of automobiles." It may be noted that the violin and cello necks in question were not held to be themselves musical instruments.

We therefore agree with the conclusion of the board that the present articles were not dutiable at the rate of 45 per cent ad valorem under the enumeration of automobile bodies; and accordingly we follow the stipulation of the parties aforesaid, and hold that the merchandise was dutiable at the rate of 20 per cent ad valorem as articles composed wholly or in chief value of metals, under paragraph 167 of the act. Since the board's decision found the component material of chief value to be wood, that decision is modified as aforesaid, but in other respects it is affirmed. *Modified.*

(T. D. 39148.)

No consul.

No consul located at Tunas de Zaza, Cuba.

TREASURY DEPARTMENT, *June 5, 1922.*

To Collectors of Customs and Others Concerned:

The Secretary of State has informed the department that Tunas de Zaza, Cuba, has been placed on the "no consul" list.

Invoices, therefore, certified pursuant to the provisions of section 2844 of the Revised Statutes at Tunas de Zaza, Cuba, may be accepted by the collectors of customs.

(64064.) EDWARD CLIFFORD, *Assistant Secretary.*

(T. D. 39149.)

Veal—Calves' skins.

Appeal directed from decision of the Board of United States General Appraisers, Abstract 44861, in which the board held that carcasses of calves with the skins on were not dutiable as entireties.

TREASURY DEPARTMENT, *June 5, 1922.*

SIR: The department is in receipt of your letter of the 1st instant, inviting attention to a decision of the Board of United States Gen-

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eral Appraisers dated April 6, 1922, Abstract 44861, wherein the board held that certain carcasses of calves with skins on, classified as entireties, dutiable at 2 cents per pound as veal, under paragraph 14 of the emergency tariff act, were dutiable as follows, viz, the veal at 2 cents per pound under paragraph 14 of the said act and the skins free of duty under paragraph 506 of the tariff act of October 3, 1913.

In accordance with your recommendation, the department hereby approves your action in filing in the name of the Secretary of the Treasury an application with the United States Court of Customs Appeals for a review of the said decision in conformity with the provisions of subsection 29 of Section 28 of the tariff act of August 5, 1909.

Respectfully, W. G. PLATT,
(97710.) *Acting Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 39150.)

Drawback—Certificates of delivery.

Article 872 of the Customs Regulations of 1915 amended so as to require the filing of certificates of delivery in duplicate.

TREASURY DEPARTMENT, *June 8, 1922.*

To Collectors of Customs at Naval Office Ports:

Article 872 of the Customs Regulations of 1915 is hereby amended by adding to the first paragraph thereof the following:

At naval office ports the certificate of delivery herein provided for shall be filed in duplicate with the collector, who will transmit the copy to the naval officer.

The duplicate certificate of delivery need not be signed or sworn to, and may be a carbon copy of the original.

(85326.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39151.)

Drawback.

Synopsis of drawback decisions issued between June 5 and 10, 1922, respectively.

(A) *Feathers, millinery, decorated.*—Manufactured by the Aber Manufacturing Co., of New York, N. Y., for the account of the Bertal Textile Co. (Inc.), of New York, N. Y., with the use of imported feathers.

A manufacturing record shall be kept in the manner described in the sworn statements of the exporter and manufacturer, dated May

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26 and 31, 1922, respectively, showing, in the case of each lot of decorated feathers manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of each kind of imported feathers used, and the quantity of finished feathers of each kind obtained. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the feathers actually exported, as shown by the abstract from the manufacturing record. If the imported feathers are of different values and the entire lot is not exported, the records shall show the quantity of each kind of feathers included in the lot and the separate values thereof, and the drawback shall be distributed to the feathers according to their relative values.

Rate effective on and after May 11, 1922.

Sworn statements dated May 26 and 31, 1922, transmitted to the collector of customs at New York, N. Y., on June 7, 1922. (97420–5.) (Signed) ELMER DOVER, *Assistant Secretary.*

(B) *Flour.*—Manufactured by the Tacoma Grain Co., of Tacoma, Wash., wholly or in part with the use of imported wheat.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer, dated May 18, 1922, showing, in the case of each lot of flour manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, value, and identity of the imported wheat used, the quantity of domestic wheat used, if any, and the quantities and values of the flour and mill feed obtained, together with the quantity of waste incurred and its value, if any. A sworn abstract from such manufacturing record shall be filed with the drawback entry or certificate of manufacture.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the imported wheat used in the manufacture of the exported flour, as shown by the abstract from the manufacturing record. In liquidation the drawback shall be distributed to the principal product, flour, and the by-product, mill feed, according to their relative values at the time and place of manufacture, subject to the limitations of the drawback law as interpreted by the department in T. D. 33809 of October 25, 1913. If the wastage has a value, the quantity of imported wheat which may be used as a basis for the allowance of drawback shall be reduced according to the quantity thereof which the value of the waste will replace.

Rate effective on and after February 14, 1922.

Sworn statement dated May 18, 1922, transmitted to the collector of customs at Seattle, Wash., on June 6, 1922. (109997.) (Signed) ELMER DOVER, *Assistant Secretary.*

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(C) *Lead, white.*—T. D. 32516 of May 18, 1912, as amended by T. D. 32701 of July 11, 1912, and extended by T. D. 36642 of August 23, 1916, providing for the payment of drawback on dry white lead, white lead in oil, and white lead in water, manufactured by the United Lead Co., of New York, N. Y., with the use of imported pig lead or lead produced from imported bullion or lead-bearing ores, and domestic or imported linseed oil or linseed oil produced from imported flaxseed, further extended to provide for drawback on such products when manufactured wholly or in part by the Carter process.

The allowance for valueless waste incurred in the Carter process shall not exceed 1 per cent of the quantity of lead used.

Extension effective on and after February 4, 1922.

Supplemental sworn statement dated May 12, 1922, transmitted to the collector of customs at New York, N. Y., on June 2, 1922. (81031.) (Signed) EDWARD CLIFFORD, *Assistant Secretary.*

(D) *Machinery, textile; flyers for roving frames.*—T. D. 38409 (F), of May 13, 1920, providing for the payment of drawback on top flats for carding machines manufactured by the Whitin Machine Works, of Whitinsville, Mass., with the use of imported card clothing, and on roving frames manufactured with the use of imported flyers, amended to provide for drawback on flyers for roving frames manufactured by the said firm with the use of imported rough flyers.

Supplemental sworn statement dated May 15, 1922, transmitted to the collector of customs at Boston, Mass., on June 3, 1922. (108347.) (Signed) EDWARD CLIFFORD, *Assistant Secretary.*

(E) *Marble slabs.*—T. D. 38488 (C) of August 14, 1920, providing for the payment of drawback on marble slabs manufactured by the Georgia Marble Co., of Tate, Ga., from imported rough marble blocks, extended to provide for drawback on polished marble slabs produced by the said firm from imported marble blocks.

The said regulations are also extended to provide for drawback on marble slabs, polished or unpolished, manufactured by the said firm at its factories at Nelson and Marietta, Ga.

Extension effective on and after November 7, 1921.

Supplemental sworn statement dated January 25, 1922, transmitted to the collector of customs at Tampa, Fla., on June 3, 1922. (104131-2.) (Signed) EDWARD CLIFFORD, *Assistant Secretary.*

(F) *Oil, olive, filtered and repacked.*—Produced by George Lueders & Co., of New York, N. Y., from crude olive oil imported in bulk.

A record shall be kept in the manner described in the sworn statement of the producer dated May 24, 1922, showing, in the case of each lot of filtered and repacked olive oil produced for exportation with benefit of drawback, the identity of the imported olive oil used,

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the quantity of filtered olive oil obtained, and the number and size of containers in which packed. A sworn abstract from such record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the quantity of filtered olive oil actually exported, as shown by the abstract from the record provided for above.

Rate effective on and after January 11, 1922.

Sworn statement dated June 2, 1922, transmitted to the collector of customs at New York, N. Y., on June 2, 1922. (94403-6.) (Signed) EDWARD CLIFFORD, *Assistant Secretary.*

(G) *Paper, wrapping.*—Manufactured by the Safepack Mills, of Boston, Mass., with the use of imported paper.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer, dated May 23, 1922, showing, in the case of each lot of wrapping paper manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity of each kind and size of wrapping paper manufactured and the quantity and identity of each kind of imported paper appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the imported paper appearing in the exported wrapping paper as shown by the abstract from the manufacturing record.

Rate effective on and after April 11, 1922.

Sworn statement dated May 23, 1922, transmitted to the collector of customs at Boston, Mass., on June 3, 1922. (108977.) (Signed) EDWARD CLIFFORD, *Assistant Secretary.*

(H) *Sirups.*—Manufactured by the Atlantic Syrup Refining Co., of Philadelphia, Pa., with the use of refined sugar and refiner's sirup produced wholly or in part from imported raw sugar.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer, dated May 25, 1922, showing in the case of each lot of sirup manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantities and identity of the refined sugar and refiner's sirup used, the quantity of domestic ingredients used, if any, and the quantity of finished sirup obtained. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the refined sugar and refiner's sirup used in the manufacture of the exported sirup as shown by the abstract from the manufacturing record.

Supplemental sworn schedules may be filed covering changes in formula or sizes of containers and upon verification of such supple-

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mental schedules drawback may be allowed on sirup manufactured and packed in accordance therewith.

Rate effective on and after May 6, 1922.

Sworn statement dated May 25, 1922, transmitted to the collector of customs at Philadelphia, Pa., on June 2, 1922. (62354.) (Signed) EDWARD CLIFFORD, *Assistant Secretary.*

(T. D. 39152.)

Acceptance of estimated duties in lieu of bond under subsection 4, paragraph J, Section IV, tariff act of 1913—Article 379 of the Customs Regulations of 1915 amended.

TREASURY DEPARTMENT, *June 10, 1922.*

To Collectors and Other Officers of the Customs:

The third paragraph of article 379 of the Customs Regulations of 1915 is amended to read as follows:

Bond shall be required on Customs Form 7563 in a penal sum equal to double the estimated duty, or in the case of articles entered under subsection 4, paragraph J, Section IV, of the tariff act, estimated duties may be accepted in lieu thereof and refund made from the excess of deposits account upon compliance with the conditions of the bond.

T. D. 38857 of September 28, 1921, is hereby superseded.

(83711.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39153.)

Foreign currencies—Rates of exchange.

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), emergency tariff act of May 27, 1921.

TREASURY DEPARTMENT, *June 12, 1922.*

To Collectors of Customs and Others Concerned:

The appended table of the values of certain foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), act of May 27, 1921, during the period from June 2 to June 8, 1922, both inclusive, is published for the information of collectors of customs and others concerned.

(103512) ELMER DOVER, *Assistant Secretary.*

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Values of foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), emergency tariff act of May 27, 1921.

PERIOD JUNE 2 TO 8, 1922, INCLUSIVE.

Country.	Name of currency.	June 2.	June 3.	June 5.	June 6.	June 7.	June 8.
Europe:							
Austria	Krone	$0.000092	$0.000089	$0.000087	$0.000086	$0.000073	$0.000070
Belgium	Franc	.0843	.0842	.0842	.0844	.0844	.0841
Bulgaria	Lev	.007267	.007414	.00742	.007467	.007442	.007467
Czechoslovakia	Krone	.019411	.019461	.019483	.019433	.019375	.019383
Denmark	do	.2186	.2189	.2190	.2208	.2218	.2213
England	Pound sterling	4.4753	4.4813	4.5044	4.5095	4.5043	4.4983
Finland	Markka	.021175	.021325	.02135	.0216	.021463	.02145
France	Franc	.0913	.0912	.0913	.0915	.0914	.0910
Germany	Reichsmark	.003681	.003669	.003602	.003489	.003536	.003444
Greece	Drachma	.0419	.0420	.0420	.0423	.0423	.0422
Holland	Guilder	.3888	.3895	.3897	.3909	.3909	.3906
Hungary	Krone	.001227	.001228	.001222	.001218	.001190	.001182
Italy	Lira	.0522	.0521	.0522	.0523	.0522	.0520
Norway	Krone	.1786	.1790	.1787	.1784	.1773	.1766
Poland	Mark	.000249	.000251	.000254	.000254	.000254	.000255
Portugal	Escudo	.0765	.0771	.0766	.0773	.0771	.0769
Rumania	Leu	.006864	.006859	.006863	.006847	.006834	.006803
Serbia	Dinar	.014217	.014293	.014243	.014279	.014393	.014457
Spain	Peseta	.1581	.1581	.1586	.1587	.1584	.1583
Sweden	Krona	.2590	.2595	.2593	.2612	.2614	.2609
Switzerland	Franc	.1913	.1914	.1914	.1918	.1916	.1916
Yugoslavia	Krone	.003563	.003567	.003564	.003564	.003597	.003614
Asia:							
China	Chefoo tael	.8308	.8275	.8292	.8217	.8342	.8408
Do	Hankow tael	.8308	.8275	.8292	.8217	.8342	.8408
Do	Shanghai tael	.7896	.7867	.7890	.7798	.7921	.7977
Do	Tientsin tael	.8367	.8317	.8325	.8267	.8383	.8458
Do	Hongkong dollar	.5770	.5761	.5763	.5739	.5759	.5801
China	Mexican dollar	.5720	.5703	.5716	.5668	.5760	.5775
Do	Tientsin or Peiyang dollar.	.5825	.5817	.5875	.5942	.5908	.5975
Do	Yuan dollar	.5733	.5742	.5825	.5900	.5808	.5875
India	Rupee	.2910	.2901	.2910	.2918	.2909	.2914
Japan	Yen	.4754	.4759	.4766	.4771	.4768	.4761
Singapore (S. S.)	Dollar	.5100	.5092	.5100	.5146	.5142	.5163
North America:							
Canada	do	.990347	.990528	.990889	.991211	.991025	.990764
Cuba	Peso	.998625	.998594	.998672	.998672	.99875	.998906
Mexico	do	.483906	.484844	.48425	.484225	.485775	.48575
Newfoundland	Dollar	.987969	.988203	.988906	.988984	.988906	.988281
South America:							
Argentina	Peso (gold)	.8236	.8253	.8263	.8258	.8261	.8260
Brazil	Milreis	.1377	.1381	.1378	.1379	.1382	.1383
Uruguay	Peso	.8056	.8082	.8095	.8109	.8112	.8151

(T. D. 39154.)

Narcotic drugs import and export act.

Department publishes act approved May 26, 1922, with emergency regulations approved by the Federal Narcotics Control Board and instructions to customs officers in accordance therewith.

TREASURY DEPARTMENT, *June 12, 1922.*

To Customs Officers and Others Concerned:

Attention is invited to the appended copy of the narcotic drugs import and export act approved May 26, 1922.

Pending the promulgation of permanent regulations under this act, the Federal Narcotics Control Board has approved the following emergency regulations:

(*a*) Pending further instructions, the Division of Customs of the Treasury Department may, within its discretion, license importations, including withdrawals from warehouse for consumption, of crude opium and coca leaves for reputable concerns

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and exportation of narcotic drugs, and also in transit shipments, as nearly as practicable in conformity with the regulations in force on the enactment of the narcotic drugs import and export act of May 26, 1922.

(*b*) Narcotic drugs other than opium or coca leaves arriving in the United States on or after May 26, 1922, shall be dealt with in accordance with the provisions of paragraph (*d*), section 2, of the act.

(*c*) The definitions of opium, cocaine, preparation, and derivative, in the regulations in T. D. 38381 are adopted until otherwise ordered.

In pursuance of the foregoing regulations customs officers are hereby instructed as follows:

(1) Importations of crude opium and coca leaves may be made only at the following-named ports: Baltimore, Boston, Chicago, Detroit, Honolulu, New Orleans, New York, Philadelphia, San Juan, San Francisco, Seattle, and St. Louis.

(2) Crude opium and coca leaves may be entered for warehouse, but may not be withdrawn for any purpose except upon applications approved by the Division of Customs.

(3) Applications for permission to make entry for consumption or withdrawals from warehouse, for any purpose, of crude opium or coca leaves, or for permission to make exportations or intransit shipments of narcotic drugs must be made under oath, in triplicate, and should state in detail all material facts, especially the intended uses of the merchandise. Such applications should be filed with the collector of customs sufficiently early to permit of orderly procedure and all necessary investigations. Collectors will forward such applications to the Division of Customs as soon as practicable, with their recommendation and comments.

(4) The approval by the Division of Customs of any application will be subject to compliance with the appropriate customs and internal revenue laws and regulations.

(5) When in doubt, customs officers will ask the department for further instructions.

(90956–10.) ELMER DOVER, *Assistant Secretary.*

[PUBLIC—NO. 227—67TH CONGRESS.]

[H. R. 2193.]

An act to amend the act entitled "An act to prohibit the importation and use of opium for other than medicinal purposes," approved February 9, 1909, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 1 and 2 of the act entitled "An act to prohibit the importation and the use of opium for other than medicinal purposes," approved February 9, 1909, as amended, are amended to read as follows:

"That when used in this act—

"(a) The term 'narcotic drug' means opium, coca leaves, cocaine, or any salt, derivative, or preparation of opium, coca leaves, or cocaine;

"(b) The term 'United States,' when used in a geographical sense, includes the several States and Territories and the District of Columbia;

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"(c) The term 'board' means the Federal Narcotics Control Board established by section 2 of this act; and

"(d) The term 'person' means individual, partnership, corporation, or association.

"SEC. 2. (a) That there is hereby established a board to be known as the 'Federal Narcotics Control Board' and to be composed of the Secretary of State, the Secretary of the Treasury, and the Secretary of Commerce. Except as otherwise provided in this act or by other law, the administration of this act is vested in the Department of the Treasury.

"(b) That it is unlawful to import or bring any narcotic drug into the United States or any territory under its control or jurisdiction; except that such amounts of crude opium and coca leaves as the board finds to be necessary to provide for medical and legitimate uses only, may be imported and brought into the United States or such territory under such regulations as the board shall prescribe. All narcotic drugs imported under such regulations shall be subject to the duties which are now or may hereafter be imposed upon such drugs when imported.

"(c) That if any person fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or assists in so doing, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported contrary to law, such person shall upon conviction be fined not more than $5,000 and imprisoned for not more than ten years.

"(d) Any narcotic drug imported or brought into the United States or any territory under its control or jurisdiction contrary to law shall, (1) if smoking opium or opium prepared for smoking, be seized and summarily forfeited to the United States Government without the necessity of instituting forfeiture proceedings of any character; or, (2) if any other narcotic drug, be seized and forfeited to the United States Government, without regard to its value, in the manner provided by sections 3075 and 3076 of the Revised Statutes, or the provisions of law hereafter enacted which are amendatory of or in substitution for such sections. Any narcotic drug which is forfeited in a proceeding for condemnation or not claimed under such sections, or which is summarily forfeited as provided in this subdivision, shall be placed in the custody of the board and in its discretion be destroyed or delivered to some agency of the United States Government for use for medical or scientific purposes.

"(e) Any alien who at any time after his entry is convicted under subdivision (c) shall, upon the termination of the imprisonment imposed by the court upon such conviction and upon warrant issued by the Secretary of Labor, be taken into custody and deported in accordance with the provisions of sections 19 and 20 of the act of February 5, 1917, entitled 'An act to regulate the immigration of aliens to, and the residence of aliens in, the United States,' or provisions of law hereafter enacted which are amendatory of or in substitution for such sections.

"(f) Whenever on trial for a violation of subdivision (c) the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction, unless the defendant explains the possession to the satisfaction of the jury.

"(g) The master of any vessel or other water craft, or a person in charge of a railroad car or other vehicle, shall not be liable under subdivision (c) if he satisfies the jury that he had no knowledge of and used due diligence to prevent the presence of the narcotic drug in or on such vessel, water craft, railroad car, or other vehicle; but the narcotic drug shall be seized, forfeited, and disposed of as provided in subdivision (d)."

SEC. 2. That sections 5 and 6 of such act of February 9, 1909, as amended, are amended to read as follows:

"SEC. 5. That no smoking opium or opium prepared for smoking shall be admitted into the United States or into any territory under its control or jurisdiction for trans-

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portation to another country, or be transferred or transshipped from one vessel to another vessel within any waters of the United States for immediate exportation or for any other purpose; and except with the approval of the board, no other narcotic drug may be so admitted, transferred, or transshipped.

"SEC. 6. (a) That it shall be unlawful for any person subject to the jurisdiction of the United States Government to export or cause to be exported from the United States, or from territory under its control or jurisdiction, or from countries in which the United States exercises extraterritorial jurisdiction, any narcotic drug to any other country: *Provided*, That narcotic drugs (except smoking opium and opium prepared for smoking, the exportation of which is hereby absolutely prohibited) may be exported to a country only which has ratified and become a party to the convention and final protocol between the United States Government and other powers for the suppression of the abuses of opium and other drugs, commonly known as the International Opium Convention of 1912, and then only if (1) such country has instituted and maintains, in conformity with that convention, a system, which the board deems adequate, of permits or licenses for the control of imports of such narcotic drugs; (2) the narcotic drug is consigned to an authorized permittee; and (3) there is furnished to the board proof deemed adequate by it that the narcotic drug is to be applied exclusively to medical and legitimate uses within the country to which exported, that it will not be reexported from such country, and that there is an actual shortage of and a demand for the narcotic drug for medical and legitimate uses within such country.

"(b) The Secretary of State shall request all foreign Governments to communicate through the diplomatic channels copies of the laws and regulations promulgated in their respective countries which prohibit or regulate the importation and shipment in transit of any narcotic drug and, when received, advise the board thereof.

"(c) The board shall make and publish all proper regulations to carry into effect the authority vested in it by this act."

SEC. 3. That section 8 of such act of February 9, 1909, as amended, is amended to read as follows:

"SEC. 8. (a) That a narcotic drug that is found upon a vessel arriving at a port of the United States or territory under its control or jurisdiction and is not shown upon the vessel's manifest, or that is landed from any such vessel without a permit first obtained from the collector of customs for that purpose, shall be seized, forfeited, and disposed of in the manner provided in subdivision (d) of section 2, and the master of the vessel shall be liable (1) if the narcotic drug is smoking opium to a penalty of $25 an ounce, and (2) if any other narcotic drug, to a penalty equal to the value of the narcotic drug.

"(b) Such penalty shall constitute a lien upon the vessel which may be enforced by proceedings by libel in rem. Clearance of the vessel from a port of the United States may be withheld until the penalty is paid or until there is deposited with the collector of customs at the port a bond in a penal sum double the amount of the penalty, with sureties approved by the collector, and conditioned on the payment of the penalty (or so much thereof as is not remitted by the Secretary of the Treasury) and of all costs and other expenses to the Government in proceedings for the recovery of the penalty, in case the master's application for remission of the penalty is denied in whole or in part by the Secretary of the Treasury.

"(c) The provisions of law for the mitigation and remission of penalties and forfeitures incurred for violations of the customs laws shall apply to penalties incurred for a violation of the provisions of this section."

SEC. 4. That such act of February 9, 1909, as amended, is amended by adding at the end thereof a new section to read as follows:

"SEC. 9. That this act may be cited as the 'Narcotic drugs import and export act.'"

Approved, May 26, 1922.

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(T. D. 39155—G. A. 8540.)

Wool on lambskins.

Wool on lambskins, conceded to be unwashed, is not subject to duty under the provisions of paragraph 18, emergency tariff act of 1921. Only such unwashed wool as is shorn from the skin without cleaning is dutiable under that paragraph. Such wool on the skin is provided for in paragraph 650, tariff act of 1913, and entitled to free entry thereunder.—Goat and Sheepskin Import Co. *v.* United States (5 Ct. Cust. Appls. 178; T. D. 34254) not controlling here.

United States General Appraisers, New York, June 5, 1922.

In the matter of protest 942201 of William Davies Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Strauss & Hedges (*J. L. Klingaman* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence* and *Samuel M. Richardson*, special attorneys), for the United States.

Before Board 1 (McCLELLAND, SULLIVAN, and BROWN, General Appraisers; BROWN, G. A., concurring).

McCLELLAND, General Appraiser: The merchandise which is the subject of this protest is described on the invoice as "Lamb pelts." These pelts, as imported, bore wool. The appraiser returned the skins as free of duty under paragraph 603 of the tariff act of 1913, and the wool thereon as class 1, unwashed, subject to duty at 15 cents per pound under paragraph 18 of the emergency tariff act of 1921.

There appears to be no dispute about the facts. The only issue is one of law. Paragraph 18 of the emergency act reads—

Wool, commonly known as clothing wool; including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools: Unwashed, 15 cents per pound; washed, 30 cents per pound; scoured, 45 cents per pound. *Unwashed wools shall be considered such as shall have been shorn from the animal without any cleaning;* washed wools shall be considered such as have been washed with water only on the animal's back or on the skin; wools washed in any other manner than on the animal's back or on the skin shall be considered as scoured wool. On wool and hair provided for in this paragraph, which is sorted or increased in value by the rejection of any part of the original fleece, the duty shall be twice the duty to which it would otherwise be subject, but not more than 45 cents per pound. [Italics ours.]

That Congress intended in framing paragraph 18 to class as dutiable only such unwashed wools as are actually shorn from the animal is emphasized and made clear, we think, by the provision following, which provides that washed wools shall be considered only such as have been washed with water on the animal's back or on the skin, and also in specifying that "wools washed in any other manner than on the animal's back or on the skin shall be considered as scoured wool."

Apparently paragraph 18 contains no provision which, under the application of any rule of construction, could be held to include these lambskins bearing a natural growth of unwashed wool, and we

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are therefore decidedly of the opinion that the collector's classification was erroneous. We find no paragraph in the emergency law under which the wool on these skins could be classified.

Of the three alternative claims made by the protest we eliminate those under paragraphs 603 and 604 of the act of 1913 as being untenable, and it therefore only remains to determine whether the claim under paragraph 650 is well founded. The pertinent part of that paragraph reads—

Wool of the sheep, hair of the camel, *and other like animals, and wools and hair on the skin of such animals,* * * * [Italics ours.]

Counsel for protestants cite in their brief Goat & Sheepskin Import Co. *v.* United States (5 Ct. Cust. Appls. 178; T. D. 34254), and insist that the court's ruling in that case is controlling here. We are not inclined to that view, for the reason that the court was construing an entirely different provision of law when it held that lambskins could not be deemed to be sheepskins.

In paragraph 650 wool on the skin of sheep *or other like animals* is provided for. A lamb is certainly a like animal to a sheep, and therefore, wool on the skin of a lamb would seem to be included in this provision of the free list.

The protest is sustained and the decision of the collector reversed accordingly.

CONCURRING OPINION.

BROWN, General Appraiser: Concurring in the above judgment, I respectfully add the following in support thereof:

Wool on the skin was affirmatively taxed as wool by paragraph 387, act of October 1, 1890; paragraph 360, act of July 24, 1897 (which also in paragraph 664 covering skins of all kinds, raw, excepted sheepskins with wool on), and by paragraph 371, of the act of August 5, 1909, again repeating the exception for sheepskins with the wool on in the skin, paragraph 676. The act of August 28, 1894, included all wool and hair on the skin in the free wool provision, paragraph 686, and the tariff of October 3, 1913, under which claim is here made, in paragraph 650, making wool of the sheep, hair of the camel, and other like animals free, also expressly includes all wools and hair on the skin of such animals.

In view of this long-established legislative practice to thus expressly include wool on the skin as wool, if it was to be so taxed, the omission of such express statement in the words of the emergency tariff of May 27, 1921, would seem to preclude the intent to tax wool on the skin therein, nor can the expression defining what washed wool should be for purposes of classification as "washed with water only on the animal's back or on the skin" be reasonably held to express such intention but to be merely a description of the process of washing.

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(T. D. 39156—G. A. 8541.)

Emergency tariff act.

TENDER OF ENTRY AFTER CLOSING HOURS.

Where a ship containing the importation in question arrived within the three-mile limit of the port on May 27, 1921, the collector lawfully refused the entry which was tendered after the closing hour of the customhouse, and the merchandise is dutiable under the emergency act, rather than the tariff act of 1913.

ADAMSON, G. A., dissenting, holds that the ship being in port, whether docked or not, the importer's efforts to discharge his duty by entering the merchandise and paying the charges thereon substantially complied with all lawful requirements, and his entry should be treated as of the time such efforts were made.

United States General Appraisers, New York, June 5, 1922.

In the matter of protest 940933 of Frank P. Dow Co. (Inc.), against the assessment of duty by the collector of customs at the port of Seattle.

[Affirmed.]

Frank L. Laurence (*Martin T. Baldwin* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Charles D. Laurence* and *Oscar Igstaedter*, special attorneys), for the United States.

Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers; ADAMSON, G. A., dissenting).

HAY, General Appraiser: The merchandise which is the subject of this protest consists of a shipment of shelled peanuts which were assessed at 3 cents per pound under paragraph 6 of the emergency tariff act of May 27, 1921. The claim of the protestant is that the peanuts are properly dutiable at three-fourths cent per pound under paragraph 225 of the act of 1913. The question, therefore, is under which act is the merchandise dutiable.

The peanuts in question were imported in the steamship *Protesilaus*, which it seems to be conceded arrived within the 3-mile limits and near to the port of Seattle at some hour on the 27th day of May, 1921. On that day at about 4.15 in the afternoon the protestant through his broker essayed to enter the merchandise. The entry was refused upon the ground that there was no bill of lading, the ship not yet having arrived at the point in the port where it could discharge its cargo. The protestant then through his broker tendered a bond which is required by the regulations, but this bond was refused upon the ground that it did not specify the marks on the packages of merchandise or the name of the consignee. This was at 4.25 in the afternoon, and the closing hour of the customhouse at Seattle is 4.30. The broker immediately went to the telephone, but by the time he had secured the marks on the merchandise and the name of the consignee and filled them into the bond the hour for closing the customhouse had arrived. It is true the door was not yet locked, but it was past 4.30 and the entry was refused.

The counsel for the protestant gives some space in his brief to the discussion of the geographical limits of the port of Seattle and to the

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3-mile limit to which the jurisdiction of the United States extends. We are unable to see that there is anything in this that is helpful to the importer. See United States *v.* Cordero (1 Ct. Cust. Appls. 107; T. D. 3114).

The remaining questions of law presented by the facts of the case have, we think, been settled by the decisions of this board. In F. J. Constance's case, G. A. 8504 (T. D. 39005), we held that merchandise not entered until after the 27th of May was dutiable under the emergency act. In Gallagher & Ascher's case, Abstract 23266 (T. D. 30601), we held that a collector was not compelled to accept an entry after the closing hours of the customhouse; that, notwithstanding the fact that the customhouse door was unlocked, if it had passed the hour of 4.30, the fixed closing hour of the customhouse, he could lawfully refuse the entry. See also Adolph Kraut's case, G. A. 7089 (T. D. 30890), and Kronfeldt, Saunders & Co.'s case, G. A. 7090 (T. D. 30891). As to what constitutes a port, see Hartwell Lumber Co. case, G. A. 5365 (T. D. 24535), and cases therein cited.

Following these decisions the protest in this case is overruled.

DISSENTING OPINION.

ADAMSON, General Appraiser: I think that the evidence shows that the ship had arrived in the port of Seattle when the importer attempted to make his entry and I believe that the importer substantially complied with all the legal requirements as to making entry and, from the authorities hereinafter cited, I believe he should have been allowed to do so. I do not think any of the objections of the collector were valid. The original check at first tendered for the payment of duty was finally collected and used and only a supplemental check demanded and received for the additional duty under the new act. The objection to the execution of the documents was invalid even in the opinion of the official himself as he transacted other business with the same agent at the same time in other matters and the subsequent changes in the entry and bond all were made and accepted without any additional authority or reexecution of the papers. If they were valid at last, they were valid at first.

It appears from the evidence that the acknowledged efforts of the importer to make his entry before the change in the law took effect were foiled or delayed by the officials making objections and demands that it had not been their custom to make. The efforts of the importer, although repeated at intervals through a lapse of 15 or 20 minutes, all constituted one continuous effort that was pending and continuing at the hour of 4.30 and until 4.32, when the customhouse had not closed and the same officials were there still at work.

The declaration of the officials in evidence as to whether the ship had docked or not was entirely hearsay, reciting merely that at 4.30

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they made an inquiry and were informed that the ship had not yet docked. No witness at any time denied that the ship was in the port at the time the importer was trying to make his entry, nor does anybody anywhere deny the authority of the agent to file the papers which, in my judgment, substantially complied with the requirements. The entry should be treated as made and accepted on the 27th of May.

The following authorities, I believe, support the conclusions I have reached: United States *v.* Legg (105 Fed. 930); In re Bacharach & Co., G. A. 4881; (4 Treas. Dec. 257); In re Spry Lumber Co. (G. A. 5365; 6 Treas. Dec., 571), affirmed in United States *v.* Lumber Co. (142 Fed., 432; T. D. 26826); Arnold *v.* United States (9 Cranch, 104, at 120).

(T. D. 39157—G. A. 8542.)

Rubber boots.

1. COTTON AND INDIA RUBBER WEARING APPAREL—MANUFACTURES OF INDIA RUBBER, n. s. p. f.

Hip boots of cotton and india rubber, rubber being chief value, equipped on the arch of the sole with a loop to fit a leather strap accompanying the boots, which strap is to bind the boot around the foot or ankle to prevent the boot from being pulled off by the suction of mud or water, *held* to constitute entireties, and, as such are excluded from the provision of paragraph 256, act of 1913, as not made wholly of cotton and india rubber.—Steinhardt & Bro. *v.* United States (8 Ct. Cust Appls., 372; T. D. 37629), and In re Slazenger, G. A. 8445 (39 Treas. Dec. 455) followed.

Short or knee length boots of cotton and india rubber, containing but an insignificant amount of metal, such as 1 or 2 rivets, a buckle, and 3 to 5 hobnails, *held* to be made wholly of cotton and india rubber; hence are dutiable under paragraph 256, as assessed.

2. MIXED GOODS.

Where goods dutiable under different provisions of the tariff act, or at different rates, are indiscriminately mixed, and the portion or percentage of each class in the importation is not shown by a segregation of the merchandise or by proof on the part of the importer, duty will be assessed on the whole importation at the highest rate applicable thereto.—United States *v.* Ranlett (172 U. S. 133), and United States *v.* Strauss (3 Ct. Cust. Appls., 180; T. D. 32464).

United States General Appraisers, New York, June 9, 1922.

In the matter of protests 938267, etc., of Max Kalter Mercantile Co. (Inc.), against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Almy, Van Gordon & Evans (*Don R. Almy* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Martin T. Baldwin, Frank P. Wilson, Samuel Isenschmid*, and *David Hyams*, special attorneys), for the United States.

Before Board 2 (FISCHER, HOWELL, and WELLER, General Appraisers).

WELLER, General Appraiser: The merchandise in controversy is reported by the local appraiser to consist of boots composed of cotton

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and india rubber, and it was accordingly assessed for duty by the collector at 30 per cent ad valorem under the provision of paragraph 256 of the tariff act of 1913, which so far as pertinent reads as follows:

256. * * * articles of wearing apparel of every description, composed of cotton or other vegetable fiber, or of which cotton or other vegetable fiber is the component material of chief value, or of cotton or other vegetable fiber and india rubber, made up or manufactured, wholly or in part, by the tailor, seamstress, or manufacturer, and not otherwise specially provided for in this section, 30 per centum ad valorem; * * *

The claim of the importers is that the merchandise is dutiable at only 10 per cent ad valorem under paragraph 368 of said act, as manufactures in chief value of india rubber, not specially provided for.

According to the testimony of the importers the boots covered by these protests were surplus army supplies which they purchased from the British Government.

At the hearing various sample boots were introduced in evidence as representing the different varieties and styles included in the shipments. Of these, Exhibits 1 to 4, inclusive, are rubber hip or thigh boots, lined with a cotton fabric resembling canvas. Each of these boots has fastened on the arch of the sole a rubber loop to fit a leather strap that accompanied the boots and which is intended for binding the boot around the foot or ankle, apparently to prevent the boot from being pulled off by the suction of mud or water. The leather strap is about seven-eighths of an inch wide, one-fourth of an inch thick, and 3 feet long. At one end there is a metal buckle and at the other end the strap has perforations for tightening and fastening purposes. Each boot has another strap made of rubber running through a rubber loop attachment for fastening more firmly around the knee, in which strap there is a metal rivet and metal buckle. There is still another rubber strap attachment at the top of the boots, evidently for connecting with a waist belt or suspenders to hold up the top of the boots around the hips. In this attachment there are as many as five metal rivets and a metal buckle. Exhibit 4 has in addition five rather heavy rough hobnails driven into the rubber heel, no doubt to keep the foot from slipping and as a protection against wear. In Exhibit 3 there are four round-head nails in the heel, while in Exhibits 1 and 2 no such nails are present.

Exhibits 5 to 7, inclusive, are short or knee-length rubber boots also lined with the same kind of cotton fabric, but are without the leather strap attachment, and the only metal parts consist of three round-head nails in Exhibit 5 and of five heavy rough hobnails in the heels of Exhibits 6 and 7. Exhibit 6 has in addition a rubber strap running around the outside of the boot near the top, in which there are two metal rivets and a metal buckle.

Exhibit 8 is another rubber boot of knee length, but has a lining of wool felt instead of cotton, as in the other mentioned exhibits. The

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only metal part consists of a rivet at the top and four round-head nails in the heel.

It is shown by the testimony and the analyses of both the Government and the importers that rubber constitutes the component material of chief value in all of the eight exhibits.

The contention of the importers is that the said boots are excluded from classification under paragraph 256, under which the collector assessed duty, for the following reasons: First, that rubber boots are not wearing apparel; second, that even assuming they are wearing apparel, they were, however, not made up or manufactured by the tailor, seamstress, or a manufacturer ejusdem generis with tailor or seamstress, as judicially interpreted; and, third, that the boots are not made wholly of cotton and india rubber, so that they are further excluded from the provision for wearing apparel composed of cotton or other vegetable fiber and india rubber, as judicially interpreted.

As to the first contention, we do not consider that the importers have proven any commercial designation of the term wearing apparel different from the common ordinary meaning, and the common meaning undoubtedly includes rubber boots, as well as almost any other article of clothing.—Arnold *v.* United States (147 U. S. 494, 496); United States *v.* One Pearl Chain (139 Fed. 513). Note particularly Lai Ming *v.* United States (1 Ct. Cust. Appls. 5; T. D. 30770), wherein Chinese shoes or slippers in chief value of leather, embroidered with silk, were held to be dutiable as wearing apparel under paragraph 390 of the tariff act of 1897.

In support of the second contention that the word "manufacturer" in the phrase "made up or manufactured by the tailor, seamstress or manufacturer" means a manufacturer ejusdem generis with tailor or seamstress, counsel for the importers has cited the case of Swayne *v.* Hager (37 Fed. 780), wherein certain Chinese shoes, consisting of an upper part of cotton or silk and a sole of felt and leather, were held not to be dutiable under the provision for wearing apparel as it appeared in paragraph 14 of the act of 1883. We think, however, that the circumstances under which that decision was made are not binding or controlling in the present instance, for the reason that said paragraph 14 of the act of 1883 was worded substantially different from the wording of paragraph 256 of the act of 1913, inasmuch as said paragraph 256 contains a provision for india rubber as one of the components which may enter into the manufacture of wearing apparel, which provision for india rubber was not present in paragraph 14 of the act of 1883, and it is almost impossible to conceive of any rubber wearing apparel that is not made by a rubber manufacturer instead of a tailor or seamstress. It would therefore seem that the

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entire purview of the clothing and wearing apparel provision has been so enlarged as to bring within its scope articles which were not contemplated in paragraph 14 of the act of 1883, and also articles other than such as are the product of the tailor or seamstress. Moreover, the case of Swayne *v.* Hager, cited supra, appears to have been reversed, although on some other ground, in Hager *v.* Swayne (149 U. S. 242), so that its weight as an authority would in any case be greatly diminished. The later case of Lai Ming *v.* United States, cited supra, would seem to cover this point conclusively, as the provision for wearing apparel in said paragraph 390 of the tariff act of 1897, under which Chinese shoes or slippers were held dutiable, was also followed by the qualifying phrase "made up or manufactured in whole or in part by the tailor, seamstress, or manufacturer." We therefore consider the second contention of the importers also untenable.

Taking up their third point, that the rubber boots in question are not made wholly of cotton or other vegetable fiber and india rubber, and are therefore excluded from the provision of said paragraph 256, that question raises the same kind of issue as was considered by the board in re Slazenger, G. A. 8445 (39 Treas. Dec. 455). In that case certain sole and heel attachments made of cotton and india rubber were accompanied with specially designed nails or pegs made to fit into countersunk holes or depressions in the said attachments for fastening on to the soles and heels of shoes or boots. The board held the goods to be entireties, and, as such, not made wholly of cotton and india rubber, on account of the presence of the metal pegs as a component, and the goods were accordingly held dutiable under paragraph 368 of the act of 1913, as manufactures in chief value of rubber.

The question, then, remaining for us to decide in the present instance is whether the boots in the importation are made wholly of cotton and india rubber, or whether they contain, or have attached thereto, or are accompanied with special or necessary parts or attachments made of some other material substantial in quantity or value.

Applying the foregoing test, we find the boots with the leather strap, represented by Exhibits 1 to 4, inclusive, to be entireties, and, as they contain in substantial quantity material other than cotton and india rubber, they are accordingly excluded from classification under said paragraph 256, and are dutiable under paragraph 368 of the act of 1913, as manufactures in chief value of india rubber not specially provided for.—Steinhardt & Bro. *v.* United States (8 Ct. Cust. Appls. 372; T. D. 37629); Cross *v.* United States (7 id. 43; T. D. 36308); Saji & Kariya Co. *v.* United States (9 id. 78; T. D. 37945). The importers, however, have failed to prove or show the particular percentage or proportion of the importations represented by these four exhibits.

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It is well settled that where goods dutiable under different provisions of the tariff act, or at different rates, are indiscriminately mixed, and the proportion or percentage of each class in the importation is not shown by any segregation of the merchandise, or not proven by the importer, duty will be assessed on the whole shipment at the highest rate applicable thereto.—United States *v.* Ranlett (172 U. S. 133); in re Myers, G. A. 5592 (7 Treas. Dec. 272); United States *v.* Waterhouse (1 Ct. Cust. Appls. 353; T. D. 31452); and United States *v.* Strauss & Co. (3 id. 180; T. D. 32464). In the present instance as the board has been furnished with no accurate basis upon which to order a reliquidation of the entries, we are unable to afford the importers any relief.

In the merchandise represented by Exhibits 5 to 7, inclusive, which are the short or knee length boots, we find that the small amount of the metal component, such as the hobnails, rivets, and buckles hereinbefore described, are so insignificant in quantity, character, and value, that the boots may be considered as made wholly of cotton and india rubber, and have therefore been properly assessed for duty under said paragraph 256.

In regard to the boot marked Exhibit 8, which has a wool felt lining, manifestly it can not be said to be made wholly of cotton and india rubber. But here again we are unable to afford the importers any relief, for the reason that it has not been shown what portion of the importations is of this kind of boots.

We are therefore constrained to overrule the protests as to all the merchandise, and affirm the collector's decision in each instance.

(T. D. 39158.)

Automobile tires—Validity of reappraisement.

GOODYEAR TIRE & RUBBER CO. *v.* UNITED STATES (No. 2146).

1. "ORDINARY COURSE OF TRADE"—"WHOLESALE QUANTITIES"—RESTRICTED MARKET.

When the manufacturer of imported merchandise controls its market in the country of its exportation, so that its price is fixed to each class of purchaser manufacturer, jobber, retailer, and consumer) and this price is the same regardless of the size of any purchase, there is, in that country, no "actual market value" "in the usual wholesale quantities" "in the ordinary course of trade" within the meaning of any of those expressions in paragraphs K and R, tariff act of 1913. Such fixed prices were not intended by Congress to be a factor in determining dutiable values.

2. APPRAISEMENT ON WRONG PRINCIPLE OF LAW.

An appraisement based on a wrong principle of law is void.

3. APPRAISEMENT IN CONTROLLED MARKET.

Regarding an importation from Canada of automobile tires, it is shown that the manufacturer controls the Canadian market for his tire, the price being fixed regardless of the size of the sale to each class of purchaser—automobile manufacturer,

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tire jobber, tire retailer, and tire consumer. There can be no "actual market value" or "usual wholesale quantities," or "ordinary course of trade" determined upon the basis of such prices within the meaning of any of the quoted expressions in paragraphs K and R, tariff act of 1913. The decision of the Board of General Appraisers fixing the dutiable value at the Canadian price to dealers and service stations proceeded upon a wrong principle of law, is hence void, and is reversed. Appraisement should have been made as prescribed by paragraph L, Section III, either at the cost of production or at the wholesale price for which such or similar merchandise was freely offered for sale in the usual wholesale quantities in the open market in the United States.

United States Court of Customs Appeals, June 6, 1922.

APPEAL from Board of United States General Appraisers, G. A. 8477 (T. D. 38906).

[Reversed.]

B. A. Levett (*James W. Bevans* of counsel) for appellant.

William W. Hoppin, Assistant Attorney General, (*Samuel Isenschmid*, special attorney, of counsel), for the United States.

[Oral argument April 26, 1922, by Mr. Levett and Mr. Isenschmid.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

Smith, Judge, delivered the opinion of the court:

This appeal raises the question as to the validity of the appraisement of automobile tires imported from Canada. The tires were purchased by the Goodyear Tire & Rubber Co., of Akron, Ohio, from the Goodyear Tire & Rubber Co., of Toronto, a corporation wholly independent of the importer, although having the same name and president. The tires are manufactured in Canada and their distribution, sale, and the prices at which sold in Canada are absolutely under the control and controlled by the manufacturer from the time they leave the factory until they reach the hands of the ultimate consumer. The tires are distributed by 13 or 14 agencies of the Goodyear Co. and by a limited number of jobbers and dealers whose operations are restricted to districts selected and defined by the corporation. The corporation sells to exporters, to manufacturers of automobiles, to jobbers, and to dealers at a price graded and definitely fixed for each of the four classes of buyers. The prices at which jobbers may sell to dealers or service stations, and dealers and service stations may sell to consumers, are likewise fixed by the corporation. The exporter has the privilege of buying at the lowest price, and anyone may buy tires for exportation provided he agrees to ship them out of Canada.

The manufacturer of automobiles is favored with a lower price than that prescribed for the jobber or dealer, but the tires purchased by him can not be sold except as part of the manufactured car. Jobbers, five in number, chosen by the corporation and operating within areas specified by the company may purchase the product at

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a somewhat higher price than that quoted to automobile manufacturers, but they can sell for their own account to no one except dealers within their district and then only at the price prescribed by the corporation. If the jobber retails a tire he must do so at the retailer's price and then pay the dealer's price to the manufacturer for the tire so retailed; that is to say, 10 per cent more than is charged to him as jobber, which 10 per cent is paid by the manufacturer to the dealer in whose territory the retail sale is made.

The dealers, *limited in number*, are selected by the corporation and are not permitted to operate outside of the district to which they have been assigned by the company. The dealer pays the highest price and the price at which he sells to the consumer is fixed by the manufacturer. Of the tires sold by the corporation in Canada, 45.06 per cent are sold to manufacturers of automobiles, 9.12 per cent are sold to jobbers and 45.82 per cent are sold to dealers. As the jobbers must sell to the selected dealers of their respective districts the dealers purchase for retail 54.94 per cent of the tires consumed in Canada.

The general manager of the Toronto company frankly testified that there were hundreds and perhaps thousands of dealers who were refused the privilege of purchasing and selling Goodyear tires. He said that no one not a selected jobber or dealer could come to the manufacturer and buy tires *freely* for resale in Canada, and that the corporation reserved the right to withdraw from the manufacturers of automobiles and selected jobbers and dealers the privilege of buying and selling Goodyear tires in case conditions imposed by the company were not complied with. In brief, the selected dealer and the selected jobber buy and sell the Goodyear product at a fixed price and if either sells for a price other than that fixed he loses his agency.

Tire dealers in foreign countries are not restricted in number and they may sell tires in foreign countries at any price they please. Whether tires are bought in large or small quantities does not affect the sales price to jobbers, dealers, service stations or manufacturers of automobiles.

The local appraiser appraised the importation at the price paid for tires by dealers and service stations in Canada. From this appraisement an appeal was taken to a general appraiser who approved the action of the local appraiser, and the decision of the general appraiser was affirmed on appeal by a board of three general appraisers. The importer challenged the validity of the final appraisement on the ground that it was based upon a wrong principle of law. The appraisement, however, of the three general appraisers was sustained by the classification board, General Appraiser Fischer dissenting.

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The importer petitioned this court to review the decision of the classification board and now contends that on the admitted facts disclosed by the record, the appraised value of the merchandise was not the actual market value as defined by paragraph R of Section III inasmuch as such appraised value was not the price at which such merchandise was freely offered for sale in the usual wholesale quantities to all purchasers in the principal markets of Canada.

The Government, on the other hand, argues that Goodyear tires are sold in Canada in the usual wholesale quantities to dealers who sell them for consumption, and that as such sales to dealers are made "in the ordinary course of trade," established for the particular kind of merchandise here involved, the price paid by such dealers for the tires is their actual market value. In support of that contention the Government earnestly insists that if a manufacturer succeeds in controlling the market and sale at wholesale of his merchandise in such a way that it can not be bought in any other manner, that then the method so established becomes the usual method in which such merchandise is sold at wholesale in the ordinary course of trade.

It may be that a manufacturer's control of sales and distribution from the time they leave his factory until they reach the ultimate consumer is the "ordinary course of trade" for the marketing of *his* merchandise, but we are not prepared to admit that it is the ordinary course of trade for supplying consumers with tires or other goods. In other words, price-fixing and restriction of distributing agencies may be the ordinary course of trade in Canada for the furnishing of *Goodyear* tires to the public, but it can hardly be said that it is the ordinary course of trade for the marketing of automobile tires or for the marketing of merchandise in general.

As pointed out by the Government, there is a tendency, especially among manufacturers of patented articles, to "thwart the normal effects of competition" by retaining complete control of the sales and distribution of their product until it reaches the hands of the consumer. But it can not be safely contended that that is "the ordinary course of trade" and much less that Congress recognized such marketing as a standard for determining values for tariff purposes. Far from indicating approval of such a course of trade, we think that the radical difference between the original and the present statutory definition of market value, as well as legislation permitting in certain contingencies the liquidation of duties on cost of production, or even on wholesale prices in the open market in the United States, demonstrates that Congress intended that prices fixed by a manufacturer in a market restricted and absolutely controlled by him should *not* be a factor in determining the dutiable value of merchandise. Section 19 of the act of June 10, 1890, provided that whenever goods are—

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subject to an ad valorem rate o fduty or to a duty based upon or regulated in any manner by the value thereof, the duty shall be assessed upon the actual market value or wholesale price of such merchandise as bought and sold in usual wholesale quantities, at the time of exportation to the United States, in the principal markets of the country from whence imported, and in the condition in which such merchandise is there bought and sold for exportation to the United States or consigned to the United States for sale.

When the actual market value as defined in section 19 could not be ascertained to the satisfaction of appraising officers, section 11 of that act forbade the appraisement of merchandise at less than the cost of production, which was defined as follows:

such cost of production to include cost of materials and of fabrication, all general expenses covering each and every outlay of whatsoever nature incident to such production, together with the expense of preparing and putting up such merchandise ready for shipment, and an addition of eight per cent upon the total cost as thus ascertained.

Section 11 was amended by section 32 of the tariff act of July 24, 1897, so as to permit appraising officers to add to the cost of production from 8 to 50 per cent to make appraised value. As an additional protection to the revenue, section 11 as amended allowed appraising officers to take into consideration in determining the dutiable value of merchandise the *wholesale*—

price at which such or similar merchandise is sold or offered for sale in the United States, due allowance being made for estimated duties thereon, the cost of transportation, insurance, and other necessary expenses from the place of shipment to the United States, and a reasonable commission, if any has been paid, not exceeding six per centum.

Notwithstanding all these safeguards, however, Congress found it necessary in sections 18 and 11 of the tariff act of 1909 to redefine market value and to further amend section 11 of the act of 1890. Section 18 provided—

* * * * * * *

SEC. 18. That when imported merchandise is subject to an ad valorem rate of duty, or to a duty based upon or regulated in any manner by the value thereof, the duty shall be assessed upon the actual market value or wholesale price thereof at the time of exportation to the United States in the principal markets of the country from whence exported; that such actual market value shall be held to be the price at which such merchandise is *freely offered for sale to all purchasers in said markets, in the usual wholesale quantities*, and the price which the seller, shipper, or owner would have received and was willing to receive for such merchandise when sold in the ordinary course of trade in the usual wholesale quantities. (Italics are ours.)

Section 11 made it the duty of appraising officers to determine the cost of production when market value as defined by law could not be ascertained to their satisfaction and required that the merchandise should not be appraised at less than the total cost of production.

* * * * * * *

SEC. 11. Such cost of production to include the cost of materials and of fabrication, and all general expenses to be *estimated at not less than ten per centum*, covering each and every outlay of whatsoever nature incident to such production, together with the

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expense of preparing and putting up such merchandise ready for shipment, and an addition of not less than eight nor more than fifty per centum upon the total cost as thus ascertained. (Italics are ours.)

* * * * * * *

Section 11 further provided—

that the actual market value or wholesale price, as defined by law, of any imported merchandise which is consigned for sale in the United States, or which is sold for exportation to the United States, and *which is not actually sold or freely offered for sale* in usual wholesale quantities in the open market of the country of exportation *to all purchasers*, shall not in any case be appraised at less than the wholesale price at which such or similar imported merchandise is actually sold *or freely offered for sale in usual wholesale quantities in the United States in the open market*, due allowance by deduction being made for estimated duties thereon, cost of transportation, insurance, and other necessary expenses from the place of shipment to the place of delivery, and a commission not exceeding six per centum, *if any has been paid or contracted to be paid on consigned goods, or a reasonable allowance for general expenses and profits (not to exceed eight per centum) on purchased goods*. (Italics are ours.)

Sections 11 and 18 are substantially reenacted as paragraph R and paragraph L of section 3 of the act of 1913, with the exception that from the wholesale price or market value in the United States a deduction of *8 per cent for profits and a reasonable allowance for general expenses, not to exceed 8 per cent on purchased goods, is allowed.*

Stripped of all trimmings, the position of the Government reduces itself to the bald proposition *that sales at wholesale* made to retailers by a manufacturer who effectively determines who shall buy his goods and dictates the price for which they shall be resold at wholesale and retail are nevertheless sales in the ordinary course of trade and that the wholesale price exacted by such a manufacturer is the actual market value of the merchandise.

If that position be sound, then, as General Appraiser Fischer aptly puts it in his dissenting opinion, there is no reason "why the manufacturing company may not reduce the number of its chosen representatives to one agent or dealer and still maintain that it conducts an open market and that its tires are 'freely offered for sale to all purchasers * * * in the usual wholesale quantities,' within the meaning of the law." Indeed, if prices fixed by the manufacturer in markets restricted and absolutely controlled by him constitutes market value within the intention of paragraph R, Section III, then the phrase "freely offered for sale to all purchasers" becomes utterly meaningless. More than that, if fixed prices in such a restricted market be actual market value, then the manufacturer who fixes prices and controls the market has the power to make a market value to his liking and thereby determine in some measure the duties to be paid on his product—a power which might well be exercised not to protect jobbers, dealers, and consumers, as in this case, but to reduce duties on goods manufactured largely or wholly for foreign consumption.

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Whatever may be the modern tendency "to thwart competition" we do not consider that it has yet become the *ordinary* course of trade to restrict *all* distributing agencies and control *all* prices until goods have finally reached the hands of the consumer. If such a method of selling and distributing merchandise be the ordinary course of business, it certainly can not be said that merchandise so controlled and distributed is *freely* offered for sale to *all purchasers* in the usual wholesale quantities in the principal markets of the country of exportation. To hold otherwise would do violence to the language of the statute and would not only defeat the manifest purpose of Congress that duties should not be determined by factory fixed prices in a factory controlled market, but would render futile the elaborate legislative measures provided for the protection of the customs revenues.

We hold, first, that in Canadian markets there was according to the record in this case no price at which Goodyear tires were at the time of exportation freely offered for sale in the usual wholesale quantities to all purchasers, and that therefore in the country of exportation such tires had no actual market value within the meaning of that term as defined by law; second, that as the goods had no actual market value in Canada at the time of exportation they should have been appraised as prescribed in paragraph L of Section III either at the cost of production or at the wholesale price for which such or similar merchandise was actually sold or freely offered for sale in the usual wholesale quantities in the open market in the United States; third, that, inasmuch as the appraisement was made on a wrong principle and not as prescribed by law, it is void.

The decision of the Board of General Appraisers is *reversed.*

(T. D. 39159.)

Abandonment.

CITRO CHEMICAL CO. *v.* UNITED STATES (No. 2157).

ENTRY, TIME OF—ABANDONMENT, WHEN TO BE MADE.

Entry of a shipment of citrate of lime was attempted to be made by filing with the collector on July 13, 1920, the invoice and a formal declaration. The declaration stated the merchandise had come into New York July 10, 1920, whereas it really did not arrive until August 9, 1920. Upon its arrival the importer deposited the estimated duties and a bond to redeliver on demand, thereby securing the release of the merchandise. However, he did not avail himself of the delivery permit, but, discovering that the merchandise had been damaged by sea water, filed with the collector a notice of abandonment under paragraph X, Section III, tariff act of 1913. By order dated September 16, 1920, the importer was permitted to correct the date of arrival and to redeclare the merchandise, which was done on September 17, 1920. On September 20, a new notice of abandonment was filed. The question for decision is whether or not the abandonment was "within

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ten days after entry" as provided by paragraph X, Section III. The filing of the invoice and declaration on July 13 was nothing more than a notice that certain merchandise was expected, and was not the entry. The deposit of the estimated duties with the bond upon the arrival of the merchandise was no more than the giving of security and was not the entry. The correction of the date of arrival and redeclaration on September 17 was the entry, and the notice of abandonment filed September 20 was filed "within ten days after entry" as provided by paragraph X.

United States Court of Customs Appeals, June 6, 1922.

APPEAL from Board of United States General Appraisers, G. A. 8509 (T. D. 39017).

[Reversed.]

John Giblon Duffy for appellant.

William W. Hoppin, Assistant Attorney General (*Pelham St. George Bissell*, special attorney, of counsel), for the United States.

[Oral argument May 23, 1922, by Mr. Duffy and Mr. Hoppin.]

Before SMITH, BARBER, and MARTIN, Associate Judges.

SMITH, Judge, delivered the opinion of the court:

Merchandise consisting of 168 casks of citrate of lime was shipped to New York on the steamship *Wildomino*, which sailed from Messina about June 10, 1920. The invoice and bills of lading for the merchandise were received by the importer in New York some time in July, 1920, and were placed in the hands of the firm's customs broker, who attempted to enter the goods for duty on July 13, 1920, by filing with the collector on that date the invoice and a formal declaration purporting to be that prescribed by article 221 of the Customs Regulations of 1915, in accordance with section 2785, Revised Statutes, and paragraphs F and G, Section III, of the tariff act of 1913. From the declaration it appeared that 168 casks of citrate of lime had arrived on the *Wildomino* on July 10, 1920, and that the merchandise was therefore imported into the United States on that date. The *Wildomino* with her cargo of citrate of lime on board was not within the customs jurisdiction of the United States at any time during the month of July, 1920, and neither vessel nor goods arrived at the port of destination until the 9th of August, 1920.

On the arrival of the *Wildomino*, and before any of the citrate of lime was unladen or examined, the customs broker, in order to obtain immediate delivery of the importation, deposited with the collector of customs, in compliance with Treasury regulations, the sum of $2,228.70, which sum it was estimated would become due as duties on final liquidation after examination of the merchandise. (T. D. 13709.) On the security of that deposit and of a bond to redeliver on demand, the collector ordered the merchandise released to the importer with the exception of packages retained for weighing and examination.

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Subsequent to the deposit of the estimated duties and the issuance of the permit releasing the merchandise, it developed that that part of the hold of the vessel in which the cargo was stored had been flooded, and that as a result about 45 per cent of sea water was added to the citrate of lime. Just when the Citro Chemical Co. became aware of the condition of the citrate of lime does not appear. It is certain, however, that the company did not avail itself of the collector's delivery permit and that none of the citrate of lime was ever delivered to the importer. The official report of the appraiser shows that the importation did not come before him until after 10 o'clock on August 27, and that the examination of the goods took place at Carteret, N. J., which examination disclosed that the merchandise was so badly damaged because of saturation with sea water that it was unfit for commercial use as citrate of lime.

On August 26, 1920, the importer, under Section III, paragraph X, act of October 3, 1913, filed with the collector its notice of abandonment of the merchandise, in which notice it was alleged that the importation had sustained damage to the extent of more than 10 per cent both in quantity and value during the voyage. At the time that notice was filed the citrate of lime was still on board the *Wildomino*, and there it remained until October 8, 1920, or later. The deputy collector of customs, by formal order dated September 16, 1920, permitted the importer to correct the date of arrival of the importation and to redeclare the merchandise. On the following day the importer did redeclare and stated that the cargo had arrived on the steamship *Wildomino* on August 9, 1920, instead of July 10, 1920, as originally declared. On September 20, 1920, a new notice of abandonment was filed with the collector on the same grounds as stated in the original notice.

The question of abandonment was submitted by the collector to the Treasury Department, which held that the notice of abandonment came too late and that the department was therefore without authority to grant relief.

The importation and 335 casks of citrate of lime consigned to other parties and damaged in the same way had an invoice value of $143,945, but both importations were so badly damaged that their sale by the steamship company brought the sum of $2,500 only, or considerably less than half the duties collected, which amounted to $6,675.62.

The claim of abandonment was based on the following provision of paragraph X of Section III.

* * * * * * *

PAR. X. Nor shall any allowance be made for damage, but the importers may *within ten days after entry* abandon to the United States all or any portion of goods, wares, or merchandise of every description included in any invoice and be relieved from the payment of duties on the portion so abandoned: *Provided*, That the portion so abandoned shall amount to 10 per centum or more of the total value or quantity

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of the invoice. The right of abandonment herein provided for may be exercised whether the goods, wares, or merchandise have been damaged or not, or whether or not the same have any commercial value: *Provided further*, That section twenty-eight hundred and ninety-nine of the Revised Statutes, relating to the return of packages unopened for appraisement, shall in no wise prohibit the right of importers to make all needful examinations to determine whether the right to abandon accrues, or whether by reason of total destruction there is a nonimportation in whole or in part. (Italics are ours.)

* * * * * * *

The Board of General Appraisers held first, "that entry consists of all things necessary to secure the discharge of the imported merchandise and its introduction into the commerce of the country;" second, that the entry filed with the collector on July 13 was prematurely made and was of no value, if it had been ignored and a new one made on arrival of the ship and the payment of duty; third, that the payment of duties on the entry constituted an acceptance of the entry as a proper entry; fourth, that the notice of abandonment came too late inasmuch as it was filed more than 10 days after payment of duties.

The term entry as used by Congress in some statutes means the paper or declaration which the importer files with the collector.—United States *v.* Frazer (25 Fed. Cas. 1207); United States *v.* Legg (105 Fed. 930, 932). In other statutes it refers to the series of acts which accomplish the entrance of imported merchandise into the commerce of the country, and some of the cases go so far as to hold that such an entry "is not regarded as complete or finished until the entire transaction is ended between the owner and the Government in respect to duties thereon—until the duties are liquidated and paid."—United States *v.* Cargo of Sugar (25 Fed. Cas. 288); United States *v.* Baker et al (24 Fed. Cas. 953, 956, 957). Whether one meaning or the other be adopted the same conclusion results, however, and therefore we find it unnecessary to decide in which of the two senses "entry" is used in paragraph X of Section III.

The fact that the importer has no opportunity of ascertaining the condition of imported merchandise until it is released to him from customs custody, and the further fact that the provision authorizing abandonment permits the importer, *notwithstanding the provision of section 2899 of the Revised Statutes, to make all needful examinations of packages released to him in order to determine whether the right of abandonment exists*, seems to favor the interpretation put upon the word entry by the board in its decision and apparently by the Government in its brief on appeal.

If the board's interpretation be accepted and entry be held to mean the succession of acts which accomplishes the introduction of imported goods into the commerce of the country, we see no escape from the conclusion that both notices of abandonment were in time. The record discloses that as late as October 8, 1920, the citrate of

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lime was on board the steamship *Wildomino* subject to the orders of the collector of customs and still in customs custody. The importation did not enter into or become a part of the commerce of the United States until after October 8, and from that it follows that notices of abandonment filed in August and September were in the hands of the collector before completion of the entry; that is to say, before the citrate of lime became part of the country's merchandise.

On the other hand, if entry as used in paragraph X refers to the *document* which initiated customs proceedings, then the time for filing notice of abandonment began to run with the date of the entry paper, and if entry of the merchandise was made on August 9, 1920, both notices of abandonment were untimely and no relief can be granted to the importer.

The Board of General Appraisers held, in effect, that the deposit of estimated duties constituted a redeclaration and a reentry of the merchandise as of the date on which the deposit was made and that a notice of abandonment filed more than 10 days after such deposit came too late.

That conclusion seems to rest *not on the definition given by the board in its decision*, but on the assumption that the statutory 10 days after entry means 10 days after declaration of the merchandise to the collector, and on the further assumption that the date of the declaration is the date of deposit of estimated duties.

In our opinion the document filed by the importer with the collector on July 13, 1920, was no entry at all, inasmuch as there was then within customs jurisdiction no merchandise whatever to which such a document could attach. None of the papers filed with the collector on July 13, 1920, imposed any obligation whatever either on the importer or on the collector, and such papers had no more official importance than a report to the collector that certain merchandise was expected to arrive.

Tariff laws, in the very nature of things, contemplate that there must be an importation before goods can be entered for duty, and the presentation at the customhouse of any document in the form of an entry for goods on the high seas imposes no obligation either on the importer or the collector.—United States *v.* Edwin S. Hartwell Lumber Co. (142 Fed. 432, 436, 437).

In order to obtain possession of the imported merchandise before ascertainment of the duties due and to insure the Government against loss resulting from the release of its possessory lien, the importer was required by the regulations to give a bond and to deposit with the collector the estimated duties as security for the full payment of the duties found to be due on liquidation. (Arts. 230 and 238, Customs Regulations.) On final liquidation the estimated duties would become a payment of duties pro tanto, *but at the time the deposit was*

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made it stood in no other relation to the transaction than the six months' bond or other bond exacted under the regulations for the payment of duties. The estimated duties and the bond might just as well have been given on July 13, 1920, and neither one nor the other can be considered as a declaration or entry of the merchandise, and much less as a reentry or redeclaration of an entry which was null and of no effect at the time it was filed.

If the deposit of estimated duties constitutes a reentry or redeclaration then the giving of the six months' bond or other bond for the same purpose must likewise be so regarded. More than that, if the deposit of estimated duties must be accepted as dating and validating the entry, then it would result that had the importer deposited the estimated duties on July 13, 1920, which he might have done, he would have been barred from abandoning goods arriving at destination nearly a month later and concerning the condition of which he could know nothing. Worse still, the year within which reliquidation may be had by the collector would begin to run before the goods reached the United States or came into customs custody.—Cassel *v.* United States (146 Fed. 146); United States *v.* Franklin (25 Fed. 1207); United States *v.* Seidenberg et al. (17 Fed. 227); United States *v.* Long (18 Fed. 15). We say nothing of the complications that would arise under such provisions as section 33 of the tariff act of 1897, if it should be finally settled that a deposit of estimated duties dates and validates a null entry, but content ourselves with calling attention to the fact that some difficulties would confront the collector in case entry and deposit antedated the arrival of the goods.—United States *v.* Legg (105 Fed. 930). Deposits of estimated duties and bonds to secure the payment of duties can not be regarded as dating, validating, amending, accepting, or otherwise affecting the original document of entry without entailing consequences which we are quite convinced Congress did not contemplate. It would be far more logical to say that the arrival of the goods rather than the deposit of estimated duties dates, validates and amends the entry, but as that result would be accomplished without any written record of the new date, or of the arrival of the vessel, or of the amendment made, we are not disposed to believe that it was the legislative intent to permit the customs business to be transacted in that way.

The declaration and entry of merchandise is a very formal act imposing upon the importer most serious responsibilities and a declaration, entry, reentry, or redeclaration ought not to be and can not, we think, be implied against him. An entry which does not speak the truth can not be corrected by implication and one which is void can not be galvanized into life by inferences or deductions which leave the document with all its defects and deficiencies unamended.

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In this case the deputy collector of customs knowing that neither the goods nor the ship which carried them was within customs jurisdiction when entry was made in July, 1920, and presumably recognizing that the entry was invalid, very properly permitted the importer to correct the date of arrival of the goods and to redeclare the goods. That correction and redeclaration was made on the 17th of September, 1920, and in our opinion that was the date on which the first valid entry of the merchandise was made. As notice of abandonment was filed with the collector of customs on the 20th of September, 1920, it was filed within 10 days after making a valid entry.

Whether entry refers to the series of acts which releases goods to the importer from customs custody or refers to the document which initiates customs proceedings on imported goods, notice of abandonment was made within the time prescribed by the statute and the importer should have been relieved of the payment of the duties on the merchandise abandoned.

The decision of the Board of General Appraisers is therefore *reversed.*

(T. D. 39160).

Wrist watches.

UNITED STATES *v.* EUROPEAN WATCH & CLOCK CO. (No. 2152).

1. WRIST WATCHES ARE NOT JEWELRY.

Wrist watches are not jewelry under paragraph 356, tariff act of 1913, but remain watch movements and watch cases under paragraph 161.

2. RELATIVE SPECIFICITY—n. s. p. f. CLAUSE.

The presence of the n. s. p. f. clause in one provision and its absence from another affects classification only when the merchandise is equally within both.—Drakenfeld & Co. *v.* United States (9 Ct. Cust. Appls. 124; T. D. 37979).

3. JEWELRY—UTILITARIAN ARTICLES.

In the common understanding, an article, to be regarded as jewelry, must be one that is ornamental and used in part at least for adornment. It may also serve an incidental utilitarian purpose. If, however, its primary, or dominant, or chief purpose is utilitarian, it would not be commonly called jewelry.

4. ENTIRETIES—WRIST WATCHES AND THEIR BRACELETS.

Wrist watches and their bracelets or wristlets are separable for tariff purposes.

5. EVIDENCE—JUDICIAL NOTICE.

It needs no discussion to demonstrate that ordinarily the primary purpose of carrying a watch is highly utilitarian; and common knowledge and observation demonstrate that, as to wrist watches, such purpose is generally dominant.

6. WRIST-WATCH BRACELETS OR WRISTLETS.

Wrist-watch bracelets or wristlets are not articles designed to be worn on apparel or carried on or about or attached to the person, under paragraph 356, tariff act of 1913. Nor are they and the watches together to be so classified as entireties. Their classification by the Board of United States General Appraisers as articles or wares composed wholly or in part of platinum or gold under paragraph 167, is affirmed.

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United States Court of Customs Appeals, June 6, 1922.

APPEAL from Board of United States General Appraisers, G. A. 8489 (T. D. 38943).

[Affirmed.]

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence* and *John A. Kemp*, special attorneys, of counsel), for the United States.

Curie, Lane & Maxwell for appellee.

[Oral argument April 26, 1922, by Mr. Lawrence and Mr. Lane.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

BARBER, Judge, delivered the opinion of the court:

The merchandise in this case consists of what are commonly known as wrist watches. It also includes a fob watch and an ordinary pocket watch. The wrist watches are referred to by the Government as watch bracelets, or bracelet watches, and were so designated by some witnesses For convenience they have been arranged in eight classes, represented by letters of the alphabet. We insert here these classes as they are set forth in the Government's brief. Substantially the same description of the merchandise is contained in the brief of the importer.

A. Watch movement in platinum case set with jewels on moire ribbon, with platinum, gold, and precious-stone snap.

B. Watch movement in platinum case set with jewels on pearl tissue bracelet with platinum, gold, and precious-stone snap.

C. Watch movement in platinum case on moire ribbon with gold and platinum snap.

D. Gold case containing watch movement on leather strap with gold snap.

E. Watch movement in platinum case on platinum tissue bracelet, gold and platinum snap.

F. Watch movement in platinum case set with jewels on platinum and diamond bracelet with platinum snap.

G. Watch movement in gold case (pocket watch).

H. Watch movement in platinum case set with jewels on moire ribbon fob with platinum and precious-stone ornaments.

All the merchandise, except the watch movements, was assessed for duty as jewelry at 60 per cent ad valorem under paragraph 356 of the act of 1913. The movements were assessed at 30 per cent ad valorem under paragraph 161.

The importer protested the assessment, claiming, among other things, that the watchcases were separable for duty purposes, and should have been classified under paragraph 161 as being denominatively therein provided for, and that the wristlets, that is, the devices by which the watches were held upon the wrist, called bracelets by the Government, were classifiable as articles or wares composed wholly or in part of platinum or gold under paragraph 167.

The Board of General Appraisers sustained these claims of the importer, except as to the fob, which was on the fob watch specified in class "H," above referred to, respecting which the protest was overruled.

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The Government only appealed and upon the argument here contends—

1. That the articles represented by the respective classes are entireties and all dutiable as jewelry under paragraph 356 at 60 per cent ad valorem.

2. That the enumeration in paragraph 356 of "articles valued above 20 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person," should be held to require the classification thereunder of all the merchandise; if not so, that the watch cases and wristlets should be classified thereunder, or, if this be denied, that the wristlets must fall within that classification.

The material parts of the respective paragraphs necessary of consideration are as follows:

161. Watch movements, whether imported in cases or not, watchcases and parts of watches, chronometers, box or ship, and parts thereof, lever clock movements having jewels in the escapement, and clocks containing such movements, all other clocks and parts thereof, not otherwise provided for in this section, whether separately packed or otherwise, not composed wholly or in chief value of china, porcelain, parian, bisque, or earthenware, 30 per centum ad valorem: * * *

167. Articles or wares not specially provided for in this section, if composed wholly or in part of platinum, gold, or silver, and articles or wares plated with gold or silver, and whether partly or wholly manufactured, 50 per centum ad valorem; * * *

356. Jewelry, commonly or commercially so known, valued above 20 cents per dozen pieces, 60 per centum ad valorem; * * * and articles valued above 30 cents per dozen pieces designed to be worn on apparel or carried on or about or attached to the person, such as and including buckles, cardcases, chains, cigar cases, cigar cutters, cigar holders, cigarette holders, coin holders, collar, cuff, and dress buttons, combs, matchboxes, mesh bags and purses, millinery, military, and hair ornaments, pins, powder cases, stamp cases, vanity cases, and like articles; all the foregoing and parts thereof, finished or partly finished, composed of metal, whether or not enameled, washed, covered, or plated, including rolled-gold plate, and whether or not set with precious or semiprecious stones or imitation cameos, coral, or amber, or with imitation precious stones or imitation pearls, 60 per centum ad valorem. * * *

As to item "G," which is an ordinary pocket watch, the Government makes no contention. The protest, so far as relates to the fob in item "H," having been overruled, no further specific reference thereto is deemed necessary.

It may be conceded that the evidence establishes the watch movements, watchcases, bracelets, or wristlets of the importations of the remaining classes above described constitute entireties commonly known as wrist watches. They are so sold and so used, and, as we understand, the value of the movement and its case in every instance exceeds the value of the device which holds it upon the wrist.

The board found, and the finding is not challenged, that the watchcases are not permanently attached to the wristlets or bracelets, except that in some instances it is necessary to remove pins or screws to separate them. It also found that the wristlets or bracelets "are

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not worn on the person as incidental articles of mere personal comfort, convenience, or adornment, but as a necessary and useful attachment to the watch itself."

The scheduled list of the merchandise indicates that these wrist watches are costly and beautiful.

We find ourselves unable to agree with the contention of the Government that these wrist watches are classifiable as jewlery under paragraph 356. There is no evidence that they are commercially so known, and we do not think in common understanding they are so regarded. Expensive and bejeweled watches carried in the pocket have, of common knowledge, for a long time been subjects of trade, and as we understand, the movements and cases thereof have been classified for tariff purposes under paragraph 161 or earlier statutes of similar import. The fact, if it be so, that such watches are more common now than before the advent of wrist watches, does not of itself justify any change in their tariff classification. If Congress had intended that an expensive movement or a bejeweled case should pay a rate of duty different from those not of that character, it would undoubtedly have so declared.

As we view the matter, paragraph 161 is an insuperable barrier to the classification of the watch movements and watchcases as jewlery under paragraph 356, because they are eo nomine provided for in paragraph 161 with no limitation except what is in substance known as the n. s. p. f. provision, which is not found in paragraph 356. That this does not have the effect of removing the watch movements and watchcases from classification under paragraph 161 is definitely settled by the rule of Drakenfeld & Co. *v.* United States (9 Ct. Cust. Appls. 124; T. D. 37979), to which, and the cases therein cited, reference is made.

Further than this, and not taking into consideration the material of which composed, which of itself may determine the question, we are of opinion that in the common understanding an article to be regarded as jewelry must be one that is ornamental and used in part at least for adornment. It may also serve an incidental utilitarian purpose. If, however, its primary, or dominant, or chief use is utilitarian, we do not think it would be commonly called jewelry. The question of what shall be regarded as jewelry has frequently been before this court, and we refer to several of the cases not because the precise question here was there decided but because the inferences to be drawn therefrom we think clearly support the views here expressed:

Lent *v.* United States (1 Ct. Cust. Appls. 542; T. D. 31549); United States *v.* Goldberg's Sons (3 Ct. Cust. Appls. 282; T. D. 32573); Guthman, Solomons & Co. *v.* United States (3 Ct. Cust. Appls. 286; T. D. 32574); United States *v.* American Bead Co. (3 Ct. Cust. Appls.

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509; T. D. 33166); United States *v.* Flory & Co. (4 Ct. Cust. Appls. 87; T. D. 33367); Altman & Co. *v.* United States (5 Ct. Cust. Appls. 296; T. D. 34475); United States *v.* International Forwarding Co. (6 Ct. Cust. Appls. 25; T. D. 35272); American Bead Co. *v.* United States (7 Ct. Cust. Appls. 18; T. D. 36259); American Bead Co. *v.* United States (7 Ct. Cust. Appls. 161; T. D. 36465); Bloomingdale Bros. *v.* United States (8 Ct. Cust. Appls. 314; T. D. 37596).

It needs no discussion to demonstrate that ordinarily the primary purpose of carrying a watch is highly utilitarian, and common knowledge and observation demonstrate that as to wrist watches such purpose is generally dominant. If the utilitarian character of a watch may be so submerged, so to speak, or overcome by the greater value and concededly adornment character and use of the device by which it is attached to the person as to lose its utilitarian character, which we do not decide, we think the facts of this case do not justify such a conclusion.

The Government further contends that because these wrist watches are designed to be worn on apparel or carried on or about or attached to the person they should, nevertheless, even though they are not jewelry, be classified under paragraph 356. We disagree with this view—

(*a*) Because of the exclusive provisions relating to watch movements and watchcases of paragraph 161, already considered.

(*b*) Because the articles mentioned in paragraph 356 as illustrative of what Congress had in mind, such as buckles, card cases, etc., hardly suggest that wrist watches were designed to be included in that provision.

(*c*) Because watch movements and watchcases have by judicial determination, as well as departmental direction, attained a settled definite status as separate entities for tariff purposes prior to the act of 1913, under statutes in pari materia.—T. D. 17945 (G. A. 3320); T. D. 19284 (G. A. 4135); T. D. 20806 (G. A. 4378); T. D. 23792 (G. A. 5160); T. D. 26285 (G. A. 6015); Racine *v.* United States (107 Fed. 111), affirming T. D. 20104 (G. A. 4280); T. D. 30096.

Of all this Congress is presumed to have been cognizant, and if it had intended that watch movements and watchcases should be classified under paragraph 356 of the act of 1913 it would certainly have used some language more specific to indicate such purpose than is contained in that paragraph.

As already more fully hereinbefore appears, the board found that none of the wristlets or bracelets were worn for incidental purposes of adornment, but as a necessary and useful attachment to watches. It also found as to those composed of precious metal that they "can not be worn without the watch as a matter of adornment as a bracelet."

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After some discussion and while regarding it as a close question, it concluded that all such wristlets were not dutiable as jewelry, but as manufactures of metal under paragraph 167. We think this conclusion was sound.

In view of what has already been said as to the watchcases, no further discussion is necessary of the claim of the Government that the cases and wristlets should be regarded as entireties and classified as jewelry.

We have heretofore had occasion to discuss issues similar to some raised by this appeal.

In United States *v.* Wittnauer (8 Ct. Cust. Appls. 370; T. D. 37628) we considered the proper classification of so-called wristlets or straps for holding wrist watches, composed in chief value of metal, the other materials being leather and silk. They were conceded to be valued at over 20 cents per dozen pieces and claimed to be within paragraph 356 as designed to be worn on or about the person, subserving some purpose of personal comfort, convenience, or adornment, within the meaning of that paragraph. The claim was rejected, and the articles held to be separate entities dutiable as manufactures in chief value of metal.

In United States *v.* Strasburger & Co. (9 Ct. Cust Appls. 138; T. D. 37982) the classification of gold or silver wrist watches and leather straps with silver or gold buckles intended for use therewith, but packed separately therefrom, and leather straps for wrist watches with silver buckles, imported without accompanying watches, was in issue.

The watch movements had been assessed under paragraph 161 and the watchcases with leather straps as jewelry entireties under paragraph 356. The leather straps for the watches with gold or silver buckles had been classified as articles in chief value of metal designed to be worn on or about the person under paragraph 356, and the appeal was limited to the classification of the watchcases and the straps, there being no claim on the part of the Government that the watch movements had not been properly classified. The court, by Judge De Vries, said, "The logic of the concession that the watch movements are dutiable under paragraph 161 likewise classifies the watchcases thereunder."

The straps with the gold or silver buckles were held to be within the rule of the Strasburger Co. case in 8 Court of Customs Appeals, already referred to.

The real difference between the watches here and the straps, wristlets, or bracelets, whatever they may be termed, that hold them upon the wrist, all constituting a wrist watch, and those in the cases above referred to, consists in the fact that here they are much more valuable and ornamental than were the articles in those cases.

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There is no reason, however, to believe that such a difference was intended by Congress to require a different classification.

No case cited by the Government, when carefully examined, seems to be authority for a different conclusion.

The judgment of the Board of General Appraisers is *affirmed.*

(T. D. 39161.)

Canvas cloth with colored stripe.

BALFOUR, WILLIAMSON & CO. *v.* UNITED STATES (No. 2141).

CANVAS CLOTH WITH COLORED BORDER STRIPE.

Cloth with a blue stripe along each border, made of four warp yarns about an inch from the edge, to serve as a guide in overlapping and sewing the cloth together, is dutiable as colored under paragraph 279, tariff act of 1913, and not admissible free of duty as uncolored under paragraph 408.—Bemis Bro. Bag Co. *v.* United States (11 Ct. Cust. Appls. —; T. D. 39162), decided concurrently herewith, followed.

United States Court of Customs Appeals, June 6, 1922.

APPEAL from Board of United States General Appraisers, Abstract 44508.

[Affirmed.]

Walter Evans Hampton for appellant.

William W. Hoppin, Assistant Attorney General, for the United States.

[Oral argument February 16, 1922, by Mr. Hampton and Mr. Hoppin.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

MARTIN, Judge, delivered the opinion of the court:

The merchandise was described in the invoice as canvas cloth, and consisted of plain woven fabrics composed of single jute yarns. The appraiser reported that the cloth was woven in part of colored yarns, and that these constituted a necessary and substantial part of the fabric. Accordingly he returned it for duty as colored fabrics dutiable at the rate of 10 per cent ad valorem under paragraph 279 of the tariff act of 1913.

The collector assessed duty upon the merchandise in accordance with the appraiser's return, and thereupon the importers protested, denying that the fabrics were colored, and claiming free entry for them as uncolored fabrics of single jute yarns, under paragraph 408 of the act.

The Board of General Appraisers overruled the protest, and the importers appealed.

The two competing paragraphs aforesaid read in part as follows:

279. Plain woven fabrics of single jute yarns, by whatever name known, bleached, dyed, colored, stained, painted, printed, or rendered noninflammable by any process, 10 per centum ad valorem.

(Free list.)

408. * * * plain woven fabrics of single jute yarns, by whatever name known, not * * * colored * * *.

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As will be seen from the foregoing statement the present issue is a narrow one, and depends solely upon whether the imported fabrics are colored or not, within the sense of the paragraphs just copied. For it is conceded that they are "plain woven fabrics of single jute yarns," and that they would be dutiable, if colored, under paragraph 279, or free if uncolored, under paragraph 408.

From the exhibits and testimony we learn that the imported cloth is woven in widths of about 36 inches, with selvaged edges; that its component yarns are altogether uncolored except for two blue stripes consisting of four warp yarns, which are respectively about an inch from either edge and run lengthwise throughout the woven piece. It is said that the fabric in question is primarily used in this country for making tarpaulins, and that the stripes serve as guide lines in overlapping and sewing the cloth together, when used for that purpose. The fabric is also sometimes used as matting or carpet. It is frequently dyed before being put into service, and this operation has the effect of obscuring and indeed of obliterating the colors of the stripes.

The importers lay emphasis upon the conceded fact that the imported fabric is totally uncolored save for the two stripes above described. As to these they say, "The stripe is purely utilitarian, if at all useful; it is not decorative; does not embellish; does not affect the price (except negatively), or the strength of the fabric. The stripe [they continue] is sometimes used as a marginal guide in sewing. It forms an insignificant part of the surface of the fabric." In support of this contention the importers lay stress upon the decision of this court in the case of United States *v.* Bryant & Beinecke (10 Ct. Cust. Appls. 79; T. D. 38355).

In the case of Bemis Bro. Bag Co. *v.* United States (11 Ct. Cust. Appls. —; T. D. 39162), which is decided by this court concurrently with the instant case, we said:

> In many cases arising under the various tariff revisions the board and the court have been called upon to decide whether certain imported goods came within the enumeration of colored fabrics within the purview of the law. The decisions perhaps have not been entirely uniform upon the subject. However, it has been accepted as elementary that the term "colored fabrics" is not limited in application to goods which are wholly and entirely colored, but applies also to many fabrics which are colored only in part. And in respect to such partly colored fabrics it is settled that if the colored part thereof be substantial, having reference to appearance, component quantities, and other like considerations affecting the character and condition of the cloth at the time of importation, the cloth itself should be held to be colored, within the sense of the act; but, on the other hand, if the colored part be trifling, insignificant, or negligible, the cloth should be held to be not colored. The question, therefore, becomes one of fact in each case respecting the actual character and condition of the goods when imported. In this view if imported goods be colored in a substantial measure according to the foregoing definition, it is not important whether the color be ornamental, or serves a useful purpose, or is permanent, or is visible when in final use, or adds to the marketable value of the goods. For the only question asked by

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the statute in this particular is one relating to the actual condition of the goods at the time of their importation, and not the motive therefor nor the result thereof.

* * * * * * *

The present inquiry therefore addresses itself solely to the condition of the fabric in controversy when landed, and the question is whether a substantial part thereof was in fact colored. The board has held in the affirmative, and we agree with that conclusion. It is clear that at times it may be difficult and uncertain in practice to find the dividing line between a substantial and an insignificant coloring of fabrics, and a review of the published decisions would amply sustain that statement. In this case, however, an inspection of the goods discloses that the colored stripes aforesaid, although covering less than 3 per cent of the surface, are not only clearly distinguishable from the uncolored part of the fabric, but are, in fact, distinctly observable and even conspicuous. Both in appearance and structure they form a substantial part of the surface and body of the fabric. This statement comports also with the statements of the witness that the stripes serve the purpose of identifying the goods to the trade as padding, since manifestly that purpose would best be served by distinct and conspicuous markings.

We think that the foregoing extracts from our former decision sufficiently cover the present case. It is true that these stripes consist of only 4 yarns each, whereas the former ones were composed of 6 yarns. And it does not appear in this case as in the former one that the stripes were intended to serve for the identification of the cloth in the markets, their purpose apparently being as guide lines as above stated. It must be conceded therefore that the present is a border-line case in relation to such merchandise. Nevertheless, the principles underlying the two cases are essentially similar, since in each case the stripes are a conspicuous feature of the goods when exposed to view, and constitute a substantial part of the warp threads of the fabric.

In the former decision we referred to the case of United States *v.* Bryant & Beinecke, supra, upon which the appellants rely in part in the present case, and indicated that if the goods therein involved be carefully considered, the conclusion reached in that case will be found to be consistent with this.

Accordingly, the decision of the board overruling the protest is *affirmed.*

CONCURRING OPINION BY BARBER, JUDGE.

Paragraph 408 covers fabrics *not colored,* while paragraph 279 covers those which are *colored.*

Therefore, to sustain importers' contention they must establish that the merchandise is *not* colored.

Were the question to be decided de novo without regard to previous legislative history or judicial interpretation, the view might be entertained that the word "colored" in its common meaning, and that is the question here, as applied to fabrics, contemplates the coloring of substantially the entire surface of the fabric, and consequently that there must be an absence of an imparted color to constitute a fabric not colored. It seems, however, in view of the legis-

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lative and judicial history, as shown by the main opinion, that if a fabric is colored in part it must now for tariff purposes be regarded as colored. The color of the threads in question here is in striking contrast to that of the rest of the fabric, and in my opinion it causes the surface to present an appearance so different from what it would be if such color was absent that the ordinary observer could not say the fabric was not colored, but would say that it was partially colored or striped.

As I view it there is quite a distinction between this case and that of United States *v.* Bryant (10 Ct. Cust. Appls. 79; T. D. 38355). There the fabric had a single blue warp thread equally visible on both sides of the fabric, and about 1 inch from the edge. It appeared that the office of these threads was solely and merely as a helpful marginal guide line for operators in overlapping and sewing the widths together in making various things for which the importation was almost exclusively used, and that when so sewed the colored threads, generally speaking, were no longer visible; that they could be removed without appreciably impairing the integrity of the fabrics, and were not a necessary part of it. The Board of General Appraisers had held the cloth to be not colored. This court upheld that conclusion.

In the case at bar it appears that there are two colored double warp threads equally visible on both sides of the fabric and about an inch from each selvage. These threads are of such contrasting color with the rest of the fabric and of such width that at the hearing before the board counsel for both sides, as well as the only witness who testified (for importers) generally, and we think quite naturally, referred to them as a "stripe." The testimony was to the effect that the merchandise was brought in primarily for tarpaulin cloths, to which it was partly devoted. When used in making tarpaulins the stripe served the purpose of a guide line in sewing the goods together. It was also, importers' witness said, sold by them for carpets, and when devoted to that purpose the stripe did not serve as a guide at all. An illustrative collective exhibit was introduced in evidence showing samples of the importation dyed for carpet purposes, and upon these samples the stripe is much less noticeable than upon the official exhibit. The testimony also showed that the threads constituting these stripes could not very well be removed without impairing the strength and integrity of the fabric.

In the Bryant case the board sustained the protest. Here it has been overruled, and I do not think importers have established such a state of facts as justifies their contention that the Bryant case is conclusive of the issue here. Assuming the principle of that case to be sound, I do not think it should be further extended.

In my opinion the determinative question is not whether the colored yarns form a necessary and substantial part of the article

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but rather whether they impart sufficient color to the surface of the fabric as to exclude the conclusion that it is not colored either partially or wholly.

In any event, I do not understand, in the absence of commercial designation, how a fabric which has colored stripes, such as the fabric here, upon its surface when imported can be said to be not colored at that time.

I therefore concur in the conclusion that the judgment below should be *affirmed.*

CONCURRING OPINION BY SMITH, JUDGE.

The cloth has four colored yarns running through the warp about an inch from the selvage. According to the uncontradicted evidence these colored yarns serve as a guide stripe or guide line for the overlapping and sewing together of strips of the cloth in the making of tarpaulins. It also appears that the goods are used as carpets, but it does not appear that when so used the colored yarns serve as a guide stripe.

If the fabric undyed be used for carpets, it is evident that the colored stripe would give a character to the carpet which it would not otherwise possess.

I therefore concur in the conclusion reached for the reasons stated by me in Bemis *v.* United States, suit No. 2137, this day decided (T. D. 39162).

(T. D. 39162.)

Jute padding with colored border.

BEMIS BRO. BAG CO. *v.* UNITED STATES (No. 2137).

1. COLORED FABRICS.

It has been accepted as elementary that the term colored fabrics (pars. 279 and 408, tariff act of 1913) is not limited in application to goods which are wholly or entirely colored, but applies also to many fabrics which are colored only in part. And in respect to such partly colored fabrics it is settled that if the colored part thereof be substantial, having reference to appearance, component quantities, and other like considerations affecting the character and condition of the cloth at the time of importation, the cloth itself should be held to be colored within the sense of the act; but, on the other hand, if the colored part be trifling, insignificant, or negligible, the cloth should be held to be not colored. It is not important whether the color be ornamental or serves a useful purpose or is permanent or is visible when in final use or adds to the marketable value of the goods.

2. JUTE PADDINGS, COLORED BORDER.

Plain woven jute padding to be used as interlining or stiffening for coats, with a colored stripe along each selvage made of six warp threads about a quarter of an inch from the edge and about three-eighths of an inch wide, constituting less than 3 per cent of the surface of the cloth and serving no purpose other than as an identification mark, is dutiable as colored jute fabric under paragraph 279, tariff act of 1913, and not admissible free of duty under paragraph 408 as uncolored jute fabric.

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United States Court of Customs Appeals, June 6, 1922.

APPEAL from Board of United States General Appraisers, G. A. 8464 (T. D. 38850).

[Affirmed.]

Waterhouse & Lockett for appellant.

William W. Hoppin, Assistant Attorney General (*David Hyams*, special attorney, of counsel), for the United States.

[Oral argument February 23, 1922, by Mr. Waterhouse and Mr. Hoppin.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

MARTIN, Judge, delivered the opinion of the court:

The importations now before the court consist of certain woven fabrics composed of single jute yarns, and the sole issue in the present case is whether they are colored or not colored, within contemplation of the tariff act of 1913.

There are two paragraphs of the act which severally relate to merchandise of this character, to wit, paragraph 279, which imposes duty upon such goods if colored, and paragraph 408, which grants them free entry if not colored. These goods were classified and assessed with duty by the collector under paragraph 279, which assessment was protested by the importers upon a claim for free entry under paragraph 408. It is conceded by both parties in the case that the importations should be governed by one of the two paragraphs in question.

The paragraphs read as follows:

279. Plain woven fabrics of single jute yarns, by whatever name known, bleached, dyed, colored, stained, painted, printed, or rendered noninflammable by any process, 10 per centum ad valorem.

(Free list.)

408. * * * plain woven fabrics of single jute yarns, by whatever name known, not bleached, dyed, colored, stained, printed, or rendered noninflammable by any process; * * *.

The question as aforesaid is whether the imported goods are dutiable as colored fabrics, under paragraph 279, or are entitled to free entry as goods not colored, under paragraph 408. This question was submitted upon exhibits and testimony to the Board of General Appraisers, and the collector's assessment was sustained. The importer has appealed from that decision.

The fabric in question is known as jute padding. It is a stiff and heavy material, and is said to be manufactured and used solely as an interlining for men's and women's coats. It serves as a means of adding stiffness, body, and shapeliness to such garments, and when in place in a garment it is concealed from view.

The fabric in the piece is plain-woven throughout, is about 24 inches in width, and has a selvage of jute or cotton yarn. It is concededly uncolored, except for two stripes composed of six warp

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threads each, either blue or red in color, the stripes being severally about one-quarter of an inch from the selvage edge, and running lengthwise throughout the piece. The stripe threads constitute pro tanto the warp threads of the fabric. Concerning these stripes the board said: "It is true that the colored warp threads here in question serve no useful purpose either by way of ornamentation or to give color effect, as the interlining is entirely concealed from view when used in a garment." It appears, however, from the testimony that the stripes serve the purpose of identifying this class of cloth in the trade. It is said that "it has been a practice for a good many years and it is sort of known in the trade that padding carries a colored border;" and again that the colored threads "serve as a brand or trade-mark to identify jute padding." It is said, moreover, by the witness that the jute paddings or linings "would do just as well for all purposes * * * if there was not any color in them."

The two colored stripes aforesaid are the sole feature relied upon by the Government for the assessment of the goods as colored fabrics, the stripes being as aforesaid composed of six yarns each, each stripe being about three-eighths of an inch wide, each running the entire length of the piece at a distance of about a quarter of an inch from the selvage edge, but forming no part of the selvage itself. Otherwise, it is conceded, the goods are not colored, and the sole question therefore is whether the presence of the colored stripes in the fabric as aforesaid is sufficient to serve as a basis for the board's finding that the goods are colored, within the purview of the statute. The importer answers this inquiry by the contention that "the issue here is solely whether the colored portion is of sufficient importance on any ground of ornamentation, use or necessary function to bring this fabric into the class of colored fabrics. It is submitted [continues the importer] that the colored threads here are of no significance."

In many cases arising under the various tariff revisions the board and the court have been called upon to decide whether certain imported goods came within the enumeration of colored fabrics within the purview of the law. The decisions perhaps have not been entirely uniform upon the subject. However, it has been accepted as elementary that the term "colored fabrics" is not limited in application to goods which are wholly and entirely colored, but applies also to many fabrics which are colored only in part. And in respect to such partly colored fabrics it is settled that if the colored part thereof be substantial, having reference to appearance, component quantities, and other like considerations affecting the character and condition of the cloth at the time of importation, the cloth itself should be held to be colored within the sense of the act; but on the other hand if the colored part be trifling, insignificant, or negligible, the cloth should be held to be not colored. The question

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therefore becomes one of fact in each case respecting the actual character and condition of the goods when imported. In this view, if imported goods be colored in a substantial measure according to the foregoing definition, it is not important whether the color be ornamental, or serves a useful purpose, or is permanent, or is visible when in final use, or adds to the marketable value of the goods. For the only question asked by the statute in this particular is one relating to the actual condition of the goods at the time of their importation, and not the motive therefor nor the result thereof.

This statement finds apt support in the decision of this court in Heyliger et al. *v.* United States (11 Ct. Cust. Appls. —; T. D. 38735), relating to certain cotton cloth, the warp yarn of which, before weaving, had been treated with a so-called fugitive tint solely for the purpose of assisting the weaver to distinguish the two yarns. The tint imparted color to a substantial portion of the cloth when imported. It appears that the tint was temporary; that it added absolutely nothing to the market value or final usefulness of the cloth, nor was it intended to, since it was invariably removed before the cloth was put to any use by the final consumer. Nevertheless the court held the cloth to be dutiable as colored cloth, since that was its condition when landed. The court said: "The tariff provision in question prescribes but a single criterion in this particular, and that is whether the cloth is colored or not at the time of importation. If so, it becomes dutiable as colored cloth, regardless of the means or motive with which it was colored, or the subsequent history of the article as intended by the importers."

The present inquiry therefore addresses itself solely to the condition of the fabric in controversy when landed, and the question is whether a substantial part thereof was in fact colored. The board has held in the affirmative, and we agree with that conclusion. It is clear that at times it may be difficult and uncertain in practice to find the dividing line between a substantial and an insignificant coloring of fabrics, and a review of the published decisions would amply sustain that statement. In this case, however, an inspection of the goods discloses that the colored stripes aforesaid, although covering less than 3 per cent of the surface, are not only clearly distinguishable from the uncolored part of the fabric but are in fact distinctly observable and even conspicuous. Both in appearance and structure they form a substantial part of the surface and body of the fabric. This statement comports also with the statements of the witness that the stripes serve the purpose of identifying the goods to the trade as padding, since manifestly that purpose would best be served by distinct and conspicuous markings.

In support of this conclusion we refer to some of the cases upon this subject which have been adjudicated by the board and the courts.

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In Young et al. (T. D. 17255, G. A. 3517), decided May 12, 1896, the board said in part:

The board has uniformly held that cotton cloths, when containing colored threads in the different forms of figures, stripes, checks, or otherwise, and whether covering much or little of the surface of the fabric, were dutiable under the tariff provisions for colored cotton cloths, and these decisions accord with the action of the classifying officers of customs at the several ports and the rulings of the Treasury Department covering a period of many years and under different tariff acts containing provisions for cotton cloths similar to those of the present act.

In the Delta Bag Co. case (T. D. 23286, G. A. 4997), decided September 24, 1901, the board held that certain jute bags having two stripes of colored yarns, constituting 7.5 per cent of the warp, were thereby excluded from classification as bags or sacks made from plain woven fabrics, *not* colored. The board held the stripes to be necessary, substantial, and integral parts of the bag, saying:

What would amount to a necessary and substantial element or part of merchandise must depend largely upon the facts of each case, commercial usage, the use to which an article may be put, etc. From the record and samples in this case we find, as above stated, that the colored or dyed yarns constitute a necessary and substantial part of the fabric, and accordingly the protest is overruled and the decision of the collector is affirmed.

In the Meyer & Co. case (T. D. 23618, G. A. 5105), decided March 24, 1902, the board held that bags of single jute yarns, containing a colored stripe 1 inch wide, were thereby excluded from classification as bags *not* colored; but that bags containing a single jute yarn of the warp were not so excluded. The board said: "We further find that the stripe consisting of a single jute yarn down each side of the sample mentioned does not constitute a necessary or substantial part of the article."

In the Adolf Fricke case (T. D. 25599, G. A. 5795), decided September 12, 1904, the board held that certain cotton cloth containing a single colored yarn running near the edge of the fabric, was dutiable as "cotton cloth, colored," under paragraph 304, tariff act of 1897, upon the ground that the coloring was "substantial." See also the case of John C. Graffin Co. (Abstract 42793).

The case of United States *v.* Bryant & Beinecke (10 Ct. Cust. Appls. 79; T. D. 38355) is relied upon by the importer as authority for its claim. In that case this court dealt with unbleached cotton duck or canvas about 30 inches wide having a single blue mark thread running lengthwise of the fabric about an inch from each side, the thread being equally visible on both sides. It was found that these threads were introduced into the fabric solely and merely as a helpful guide line for operators in overlapping and sewing the widths together in making sails, tents, wagon covers, tarpaulins, etc., for which duck with such colored lines is used almost exclusively; that the threads were not necessarily apparent in the canvas after being

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sewn together, as they might be obliterated by the stitching; that they were not a necessary part of the fabric, as they could be removed without appreciably impairing the integrity of it; that they were trivial in character and value, the cost of the duck being the same with or without them; and that they represented and covered but an insignificant part of the surface area of the fabric. This court sustained the board in holding that the cloth thus described was not dutiable under the provision for colored cloth, and we think that the decision was plainly justified under the general principles above expressed, since the single colored thread in question was found to be an insignificant and not a substantial element in the fabric as imported. We can not see any inconsistency between the foregoing decision and that reached by us in the instant case.

We have not overlooked the fact that it has been an administrative practice in the customs service since the enactment of the tariff act of 1913 to classify goods of this character as not colored and as entitled to free entry consistently with the claim made by the importer herein. That practice, however, was in contravention of the law, as we understand it, and it should not be given a controlling effect in the case. Nor has it continued a sufficient time to have received an implied legislative sanction.

In accordance with the foregoing view we affirm the decision of the board. *Affirmed.*

CONCURRING OPINION BY SMITH, JUDGE.

I concur in the conclusion reached.

The goods are represented by two exhibits, one of which, Exhibit 3, is a plain-woven fabric composed of uncolored jute yarns with the exception of a stripe three-eighths of an inch from the edge, into the warp of which stripe is woven six threads or yarns colored blue, and to that extent differing from the other threads or yarns composing the fabric. Exhibit 4, the other exhibit, differs from Exhibit 3 in the particular only that the warp threads of the stripe are red instead of blue.

On the hearing before the board, Morris A. Goldman, president of the Milford Manufacturing Co., on behalf of the importer testified that the importation was known as jute padding, and that it was used for padding or interlining men's and women's coats and overgarments. He said that the colored stripes in the cloth were woven into it for the purpose of identifying it to the trade as padding, and that when the padding was once sewn into a garment the stripes could no longer be seen and served no useful purpose. This witness also stated that goods of the same construction and of equal width might be used for other purposes than padding, although he knew of no such use. He said that since the passage of the tariff act of 1913 similar goods had been admitted free of duty under paragraph 408.

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W. W. Hirtle, an examiner at the port of Boston, called on behalf of the importer, testified that the goods having a selvage containing six colored threads or yarns had been admitted free of duty since 1918, and that prior to that time his predecessor in office admitted free of duty like goods imported under the act of 1913.

On the evidence submitted to it the board held that the colored stripe was not included in the selvage of the cloth and that it constituted a material and essential part of the fabric, inasmuch as the colored threads composing it could not be withdrawn without destroying or impairing the usefulness of a part of the fabric at least. On that finding the board overruled the protest and the importer appealed.

The appellant contends first, that the colored stripe is an insignificant portion of the fabric inasmuch as it constitutes only three-eighths of an inch of the width of a fabric 22 inches wide, and the colored threads composing it are less than 3 per cent of the total warp threads in the cloth; second, that the colored threads do not embellish or ornament the fabric in any way and serve no purpose other than that of identifying a particular brand or class of cloth; and third, that administrative practice has established the classification of the goods as uncolored jute fabrics.

Just what is a cloth colored has given rise to considerable apparent if not actual conflict of decision attributable in most cases to a peculiar wording of the particular statutes interpreted and in a few cases to a strict construction which took into account only the presence of color and declined to consider whether the color present embellished, decorated, or ornamented or advanced the cloth or made it more pleasing or attractive to the eye or desirable to the ultimate consumer by giving to it a tint, shade, hue, or color other than that which was natural to it.

And so we find that under a provision which laid a duty on cotton cloths colored, it was held that cotton cloths figured, striped, or checked by colored threads, whether covering *much* or *little* of the surface of the fabric, were dutiable as colored cotton cloths. (Pars. 253 and 254, act of 1894, T. D. 17255; G. A. 3517; T. D. 24217; G. A. 5278.)

On the other hand a provision which laid a duty on bags or sacks made from plain woven fabrics of single jute yarns *not* colored, was held inapplicable to bags having a colored stripe about an inch wide (T. D. 23286) and applicable to bags which contained a single colored thread along one side. (Par. 343, act of 1897; T. D. 23618.)

The board held that Jacquard figured goods having a thread different in color from the other threads and running straight across the back, but not appearing on the right side of the fabric, was not dutiable under paragraph 387, act of 1897, as Jacquard figured goods

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having two or more colors in the filling. (T. D. 22178.) Judge Townsend of the Circuit Court reversed that decision and decided that although the colored threads appeared only on the back of the cloth, they were nevertheless "colored threads in the filling" and therefore came within the express terms of the statute.—Johnson *v.* United States (123 Fed. 997).

The board evidently regarded Judge Townsend's ruling as a reversal not only of their holding in T. D. 22178 but also of that part of T. D. 23618 which held that bags having a single colored thread along one side were not colored, and therefore the board ruled that a single colored thread whether on the side of jute bags or on the edge of cotton cloth constituted a colored fabric. (T. D. 23309; T. D. 25599.) Indeed, Johnson *v.* United States, supra, exerted such a potent influence that the board materially modified its earlier rulings as to colored cottons and held that cotton cloth was colored even if the color effect was produced by the introduction of extra threads; that is to say, threads other than the warp and weft threads. (T. D. 27762; T. D. 28447.) These decisions were reversed, however, by the Circuit Court and that reversal was affirmed by the Circuit Court of Appeals.—United States *v.* Rusch et al. (160 Fed. 279); United States *v.* Rusch & Co. (167 Fed. 523). In order to meet the decision of the Circuit Court and the Circuit Court of Appeals, Congress passed paragraph 320 of the act of 1909, which defined cotton cloth dyed or colored to be—

*all cotton cloth * * * which has any dyed, colored * * * or printed threads in or upon any part of the fabric.*

From the legislation on colored cloths and fabrics with colored threads and the judicial interpretations of it, it is apparent that decisions construing a provision for fabrics having colored yarns or threads in the filling or for cloth having colored threads or yarns in any part of the fabric, can not be regarded as useful in determining the meaning of a provision for cloth colored. In other words, a cloth which has a colored thread or threads in it is not *necessarily* a colored cloth, although it might well be regarded as a cloth with colored threads in the filling or as having colored threads in or upon some part of the fabric.

In my opinion a colored cloth is one which, when ready for its final use, is embellished, decorated, ornamented, advanced, or made more pleasing or attractive to the eye, or which may be more desirable to the ultimate consumer by reason of a tint, shade, hue, or color other than that which is natural to it.

The colored yarns in the cloth in issue are so placed that they are apparent when the fabric is finally prepared for its ultimate use, and beyond question the colored stripes formed by such yarns, whether introduced for the purposes of identification or not, do substantially embellish, decorate, and ornament the cloth of which they are a

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part and give to the fabric ready for use a character and pleasing effect not possessed by a cloth without such yarns. In my opinion such a fabric is colored and therefore within the terms of paragraph 279.

The contention of the appellant that the stripes are trade marks or brands to identify a particular kind of cloth may be correct; nevertheless there is nothing about them which reveals that that is their purpose or which differentiates them in any way from colored stripes designed to embellish, and that suffices to bring the goods within the designation of jute fabrics colored. To hold otherwise would mean in principle that the purpose of the manufacturer, not apparent from the goods themselves, rather than their true nature and character, determines classification, and we are not ready to go that far, especially as any such ruling as that might finally result in transferring to the free list all single jute yarn fabrics ornamented with colored stripes or colored figures.

It is argued that the padding when introduced into the lining of overcoats and overgarments is concealed from view and that the stripes on the padding can not be regarded as an embellishment or an ornament to the goods inasmuch as they can not be seen. That argument is not sound, inasmuch as the stripes on the goods when prepared and ready for their ultimate use are a visible embellishment of the cloth. Moreover, there is nothing in the record which would warrant the conclusion that the fabrics are used exclusively for padding. Indeed, importer's witness, Goldman, testified that similar goods might be used for other purposes than padding, although he knew of no such use.

The claim that it was long the administrative practice to admit as uncolored jute padding of the kind here in controversy can not be sustained, inasmuch as the goods themselves disclose that they are ornamented with a colored stripe and that therefore they are colored jute cloth. Established administrative practice, especially if long continued, should be accorded great weight in reaching a conclusion as to the proper construction of a statute and the true legislative intention.—United States *v.* Philbrick (120 U. S. 52, 59); Psaki Bros. *v.* United States (3 Ct. Cust. Appls. 479; T. D. 33122); United States *v.* Borgfeldt & Co. (7 Ct. Cust. Appls. 367; T. D. 36909); Vandegrift & Co. *v.* United States (8 Ct. Cust. Appls. 1, 8; T. D. 37121). But the established administrative practice can not be invoked to defeat the legislative will when clearly expressed or to give goods a classification not warranted by their true nature, character, or commercial designation.—Pacific Creosoting Co. *v.* United States (1 Ct. Cust. Appls. 312, 315; T. D. 31407); Lloyd Co. *v.* United States (9 Ct. Cust. Appls. 280, 284; T. D. 38217); Pittsburgh Plate Glass Co. *v.* United States (2 Ct. Cust. Appls. 389, 391; T. D. 32162); Bloomingdale Bros. *v.* United States (3 Ct. Cust. Appls. 204, 205; T. D. 32530); Robertson *v.* Downing (127 U. S. 607, 613).

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CONCURRING OPINION BY BARBER, JUDGE.

Concurs for the reasons stated in his concurring opinion in Balfour, Williamson & Co. *v.* United States (11 Ct. Cust. Appls. —; T. D. 39161), this day handed down.

(T. D. 39163.)

Common carrier.

Approval of common carrier's bond.

TREASURY DEPARTMENT, *June 13, 1922.*

To Collectors of Customs and Others Concerned:

The common carrier's bond of the Moore & McCormack Co. (Inc.), No. 5 Broadway, New York, dated May 8, 1922, and approved by the department June 8, 1922, has been filed in the office of the collector of customs at New York.

(110065.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39164.)

Exportation of arms or munitions of war to China.

Collectors informed relative to permitting citizens of the United States to take to China certain arms and ammunition for self-protection or sporting purposes.

TREASURY DEPARTMENT, *June 14, 1922.*

To Collectors of Customs and Others Concerned:

Referring to prohibition of the shipment of munitions of war to China (T. D. 39058 of April 8, 1922), the Secretary of State expresses the opinion that it should not be necessary to issue permits for the exportation of arms and ammunition therefor which are being carried out of the country by citizens of the United States for sporting purposes or self-protection.

The Secretary of State adds that in any one case, however, an individual should not be permitted to carry with him arms and ammunition other than provided for in the Chinese Government regulations regarding importations by individuals of arms into China.

For the guidance of collectors in this respect the Secretary of State quotes as follows the pertinent portions of these regulations:

For self-defense: (*a*) Every respectable foreigner entering China from abroad, by sea or land, may carry in his luggage for self-defense one pistol and one revolver and a supply of cartridges for the same not exceeding 500 rounds in all, but must declare them at time of entry to the customs, who will release them after examination. Any contravention of this provision entails confiscation of the arms, etc., not declared.

* * * * * * *

(*c*) Foreigners, duly provided with passports, proceeding as travelers to the interior of China or to Tibet, Mongolia, Turkestan, etc., will be allowed to carry with them, declaration having been duly made, arms and ammunition for self-defense not exceeding twice the quantities fixed above.

* * * * * * *

For sport: (*a*) Every respectable foreigner entering China from abroad, by sea or land, may carry in his luggage not more than three sporting guns and a supply of car-

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tridges for same not exceeding 3,000 rounds in all, but must declare them at time of entry to the customs, who will release them after examination and payment of duty.

Collectors will be governed accordingly.

(47507.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39165.)

Regulations for the enforcement of the antidumping act of May 27, 1921.

TREASURY DEPARTMENT, *June 15, 1922.*

To Collectors of Customs and Others Concerned:

In order to carry out the provisions of the act of May 27, 1921, known as the antidumping act, and by virtue of the authority therein granted, the following regulations are promulgated for the guidance of customs officers:

PART I.—*General.*

1. For the purpose of securing uniformity of action and expediting investigation, there is hereby established in the special agency service an antidumping unit, in which field investigations arising under the antidumping act will be centralized.

2. Merchandise is sold at less than its fair value within the meaning of section 201 (*a*) of the act, if the purchase price or exporter's sales price of such merchandise is less than its foreign market value (or cost of production).

3. Findings of the Secretary of the Treasury made in accordance with the provisions of section 201 (*a*) of the act will be published in the Treasury Decisions with a description of the class or kind of merchandise to which they apply in such detail as may be necessary for the guidance of customs officers.

PART II.— *When the Secretary has not made public a finding.*

4. Whenever, in the case of any imported merchandise of a class or kind as to which the Secretary has not made public a finding, the appraiser or the person acting as appraiser has reason to suspect from the invoice or other papers, or from information presented to him, that the purchase price is less, or that the exporter's sales price is less, or likely to be less than the foreign market value (or in the absence of such value, than the cost of the production), he shall immediately request the importer or his authorized agent to appear before him in order that he may obtain whatever information the importer or his agent may have relative to the matter.

5. If the appraiser is then satisfied that the purchase price or the exporter's sales price is not less than foreign market value (or cost of production) he may pass the merchandise in the usual manner without giving notice to the Secretary.

6. If the appraiser is not satisfied, he shall require the importer or his agent to file an affidavit on one of the following forms, according to the circumstances of the case:

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FORM 1.

NONEXPORTER'S AFFIDAVIT.

ANTIDUMPING ACT OF 1921.

Re: Entry No..... Consular Invoice No.....
Certified at..... on.....
Import vessel or carrier..... Arrived....., 192 .

.....

I, ...do hereby solemnly swear that I am not the exporter, as defined in section 207 of the act of May 27, 1921, of the merchandise covered by the aforesaid entry. I further declare that the merchandise was purchased on.....and that the purchase price is.....

(Signed) .....

Subscribed and sworn to before me this.....day of.....1922.

.....

.....

FORM 2.

EXPORTER'S AFFIDAVIT WHERE SALES PRICE IS KNOWN.

ANTIDUMPING ACT OF 1921.

Re: Entry No ..... Consular Invoice No.....
Certified at..... on.....
Import vessel or carrier..... Arrived....., 192

.....

I, ..., do solemnly swear that I am the exporter, as defined in section 207 of the act of May 27, 1921, of the merchandise covered by the aforesaid entry; that the merchandise is sold or agreed to be sold at the prices stated in the attached statement, that, if any or all of the aforesaid items are actually sold at prices different from those set forth in the attached statement, I will immediately notify the appraiser in detail.

The merchandise was acquired by me in the following manner: .....,
and has been sold or agreed to be sold to..... at .....
(State price.)

(Signed) .....

Subscribed and sworn to before me this.....day of....., 192 .

.....

.....

FORM 3.

EXPORTER'S AFFIDAVIT WHERE SALES PRICE IS NOT KNOWN.

ANTIDUMPING ACT OF 1921.

Re: Entry No..... Consular invoice No.....
Certified at..... on.....
Importer vessel or carrier..... Arrived....., 192 .

.....

I, ..., do hereby solemnly swear that I am the exporter, as defined in section 207 of the act of May 27, 1921, of the merchandise covered by the aforesaid entry, and that the prices at which the various items will be sold in the United States are not known. I hereby stipulate that I will keep a record of the sales and furnish the appraiser with a sworn statement showing the detailed prices of the various items, within 30 days after the sale thereof. I further stipulate that at the end of six months from the date of entry if the merchandise has not been sold or agreed to be sold, in whole or in part, I will so report to the appraiser.

This merchandise was acquired by me in the following manner: .....

.....

(Signed) .....

Subscribed and sworu to before me this ..... day of ....., 192 .

.....

.....

FORM 4.

EXPORTER'S AFFIDAVIT WHERE MERCHANDISE IS NOT SOLD AND WILL NOT BE SOLD.

ANTIDUMPING ACT OF 1921.

Re: Entry No..... Consular invoice No.....
Certified at..... on.....
Vessel or carrier..... Arrived....., 192 .

.....

I, ..., do hereby solemnly swear that I am the exporter, as defined in section 207 of the act of May 27, 1921, of the merchandise covered by the aforesaid entry, and that such merchandise will not be sold in the United States for the following reasons: .....

.....

(Signed) .....

Subscribed and sworn to before me this ..... day of ....., 192 .

.....

.....

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7. On all subsequent importations by the same person of merchandise of the same class or kind as that under investigation the appraiser may waive any further appearance by the importer, provided the importer or his agent attaches to the invoice at time of entry the necessary affidavit.

8. The appraiser shall use the facilities at his disposal to secure the appearance of importers, the filing of affidavits, and, when necessary, proof of exporters' sales prices, or nonsales abroad, referring such of these matters as he may deem advisable to the special agent in charge of the district for investigation.

9. Whenever an affidavit (Form 4) has been filed by an exporter showing that merchandise of a class or kind under investigation will not be sold in the United States, the appraiser may pass the merchandise in the usual manner without giving notice of suspected dumping, if he is satisfied that no evidence to the contrary can be obtained.

10. If it shall affirmatively appear (though it may not be conclusively established) that the purchase price is less, or that the exporter's sales price is less or likely to be less, than the foreign market value (or the cost of production), the appraiser shall immediately send a notice of such fact to the Secretary of the Treasury, setting forth the reasons for his suspicions, and withhold his appraisement report until a further order of the Secretary, or until the Secretary has made public a finding in respect to such merchandise. The appraiser shall forward a copy of the notice to the collector, the importer, and the special agent in charge at the port where the antidumping unit is located.

11. A separate notice shall be given by the appraiser for each class or kind of merchandise. The notice shall contain a description of the merchandise sufficient for its identification and comparison with products of American industry, giving trade designation, construction, material, quality, size and use, and how packed and prepared. Whenever practicable, copies of notices sent for the information of the antidumping unit should be accompanied by samples, cuts, prints, or photographs.

12. (*a*) In the case of any imported merchandise as to which the appraiser has given notice to the Secretary in accordance with the provisions of section 201 (*b*), if the appraiser estimates that the amount of the special dumping increased and additional duties which may be found due on final liquidation do not exceed the duties deposited on such merchandise by more than $25, a permit may be issued for the delivery of the packages under examination, upon completion of his examination thereof, and before his appraisement report is made to the collector.

(*b*) If the appraiser finds that the amount of the special dumping, increased and additional duties may exceed the duties deposited on such merchandise by more than $25, he shall advise the collector

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so that the collector may estimate the amount of duties which may become due.

(*c*) The collector, if the estimate of the amount of such duties is small, and the importer is responsible, may permit the delivery of the examination packages upon the importer's indorsing on the entry a stipulation to pay any special dumping, increased or additional duties found due on liquidation.

(*d*) The collector, if the estimate of the amount of such duties is considerable, may deliver any such merchandise in customs custody if the merchandise is covered by a consumption entry bond (single entry or term) as provided for in T. D. 37246 as amended by T. D. 37448, or by a special dumping bond as provided for in article 19 of these regulations, or by a warehouse bond on Customs Form 7555. In cases where the merchandise is not covered by any of such bonds, or where the collector may deem it necessary, he may take an additional deposit sufficient to cover all duties which may accrue upon final liquidation.

13. If, after the issuance of a dumping notice by an appraiser, new evidence is submitted to him which satisfied him that the purchase price, or the exporter's sales price, is not less than the foreign market value and that in consequence thereof no dumping exists, he shall withdraw his notice from the Secretary, giving his reason therefor, and notify the collector and the antidumping unit of his action. The antidumping unit will notify appraising officers of the withdrawal, giving the reason therefor.

14. No importations should be detained or bond or additional deposit required or appraisement report withheld on account of any belief or suspicion of dumping which would not justify the issuance of a notice in accordance with the provisions of Article 10 of these regulations.

15. Upon receipt of a copy of an appraiser's notice, investigation shall immediately be made with respect to the class of merchandise under consideration, for the purpose of establishing whether or not an industry in the United States is being or is likely to be injured, or is prevented from being established by reason of the importation; or for the purpose of obtaining information regarding purchase price, foreign market values, cost of production, or difference in wholesale quantities. Upon the completion of this investigation, and after obtaining the views of the appraiser who issued the dumping notice, the antidumping unit shall submit, through the director of the special agency service, a report to the Secretary with recommendations. A copy of said report shall be forwarded to the appraiser who issued the notice upon which the investigation was based.

16. Whenever the antidumping unit finds, from the information in its possession, that there is reason to suspect dumping, appraising officers shall be advised. In the event that a special agent obtains

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information that causes him to suspect dumping, he shall immediately transmit such information to the appraiser at the port where the suspected dumping exists and shall inform the antidumping unit of his action. All customs officers, upon receipt of information indicating the possibility or likelihood of dumping are hereby required to forward such information to the antidumping unit.

17. Where an appraising officer has formally returned an invoice to the collector, no notice of dumping having been issued thereon, and within 60 days thereafter information is received which would apparently justify a suspicion of dumping, he should request the collector to appeal to reappraisement in accordance with the provisions of section 210 of the antidumping act, and advise the antidumping unit.

PART III.—*When the Secretary has made public a finding.*

18. In the case of imported merchandise of a class or kind as to which the Secretary has made public a finding as provided for in section 201 (*a*), if the appraiser is satisfied that the purchase price or the exporter's sales price is not less than foreign market value (or cost of production), he may pass the merchandise in the usual manner and make his report to the collector on the form provided for in article 22 of the regulations.

19. If the appraiser is not satisfied that the purchase price or the exporter's sales price is not less than the foreign market value (or cost of production), he shall require the importer or his agent to file an affidavit on one of the forms provided for in article 6 of these regulations, according to the circumstances of the case; provided that if the person by whom or for whose account such merchandise is imported is an exporter within the meaning of section 207 of the antidumping act and the merchandise has not been sold or agreed to be sold by such person, the appraiser shall refer the matter to the collector, who shall require such person to execute a bond with sureties approved by the collector in the amount equal to the estimated value of the merchandise, conditioned:

(*a*) That he will report to the collector the exporter's sales price of the merchandise within 30 days after such merchandise has been sold or agreed to be sold in the United States;

(*b*) That he will pay on demand from the collector the amount of special dumping duty, if any, imposed upon such merchandise;

(*c*) That he will keep full and detailed records of the sale of the imported merchandise, and when sold will file with the collector a brief statement thereof, under oath, giving entry number, importing vessel, date of arrival, sale price or prices, and date or dates thereof of the merchandise that has been sold.

20. Whenever the appraiser is not satisfied that the purchase price or exporter's sales price is not less than foreign market value (or cost

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of production), delivery of any such merchandise in customs custody shall be withheld unless the payment of all duties which may be found due on final liquidation has been secured in accordance with the provisions of article 12 of these regulations; but no importation shall be detained or additional deposit required or an appraisement report withheld on account of any belief or suspicion which would not justify the issuance of a notice in accordance with the provisions of article 10 of these regulations in the absence of a finding by the Secretary.

21. For the proper execution of the oaths and affidavits provided for in these regulations, collectors, after conference with the appraisers of their respective districts shall recommend to the Secretary for designation as acting deputy collectors such employees of the appraiser as may be necessary.

22. In the case of all imported merchandise of a class or kind as to which the Secretary has made public a finding as provided in section 201 (*a*) of the act, the return of the appraiser to the collector shall include the following information:

APPRAISEMENT REPORT UNDER ANTIDUMPING ACT 1921.

Finding of the Secretary dated ....., T. D. ..... applies.

The importer of this merchandise is an {importer / exporter} under the law.

Foreign market value on date of purchase .....
Purchase price (section 203) .....
Foreign market value on date of exportation .....
Exporter's sales price (section 204) .....
Cost of production .....
And in the following manner:

(*a*) Whenever merchandise has been purchased by a person who is not an exporter within the meaning of section 207 of the act, the appraiser shall report the purchase price and the foreign market value on date of purchase (or the cost of production).

(*b*) Whenever merchandise is imported by a person who is an exporter within the meaning of section 207 of the act the appraiser shall report the exporter's sales price and the foreign market value on date of exportation (or cost of production).

(*c*) Whenever an importer has filed an affidavit on Form 4 that the merchandise will not be sold in the United States, the appraiser, if he has no evidence to the contrary, shall report "Merchandise will not be sold in the United States."

(*d*) Whenever an importer has filed an affidavit on Form 3 and no report of the exporter's sales price has been received within six months after the date of entry, the appraiser shall ascertain whether the merchandise has been sold or freely offered for sale, and if so at what price, or the disposition or probable disposition of such merchandise if not sold. If the appraiser ascertains that no sale of the merchandise has been made and that no likelihood of a sale exists he shall return the invoice to the collector with a statement of the facts as he finds them.

23. In the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary has made public a finding as provided in section 201, if the purchase price or the exporter's sales price is less than the foreign market value (or, in the absence of such value, then the cost of production) there shall be levied, collected, and paid, in addition to the duties imposed thereon by law, a special dumping duty.

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(*a*) If the merchandise has been purchased by a person not an exporter within the meaning of section 207 of the act in an amount equal to the difference between the purchase price and the foreign market value on the date of purchase (or cost of production).

(*b*) If the merchandise is imported by a person who is an exporter within the meaning of section 207, in an amount equal to the difference between the exporter's sales price and foreign market value on the date of exportation (or cost of production).

24. Where the appraiser has returned an invoice with a report that the merchandise has not been sold within six months after date of entry, the collector shall refer the matter to the Secretary of the Treasury for his instructions, pending the liquidation of the entry.

25. Appeals to reappraisement and rereappraisement from the returns made by the appraiser under the antidumping act may be made after the manner and within the time provided in paragraph M, Section III, act of October 3, 1913. Notice of appraiser's returns should be sent by the collector to the importer as in cases of advances in value (Art. 585, Customs Regulations, 1915).

26. Whenever it is necessary to convert currencies for the purpose of determining the difference between the purchase price or the exporter's sales price and the foreign market value as outlined in sections 201 (*b*) and 202 (*a*) the following method will be followed:

(*a*) Where the purchase price is in United States currency and the foreign market value is in a foreign currency, then the foreign market value shall be converted into United States currency as of the date of purchase or agreement to purchase.

(*b*) Where the purchase price is in a foreign currency and the foreign market value is in the same foreign currency, then both the purchase price and the foreign market value shall be converted into the United States currency as of the date of purchase or agreement to purchase.

(*c*) Where the purchase price is in a foreign currency and the foreign market value is in a different foreign currency, then both the purchase price and the foreign market value shall be converted into the United States currency as of the date of purchase or agreement to purchase.

(*d*) Where the exporter's sales price is in United States currency and the foreign market value is in a foreign currency, then the foreign market value shall be converted into United States currency as of the date of exportation.

(*e*) Where the exporter's sales price is in a foreign currency and the foreign market value is in the same foreign currency, then both the exporter's sales price and the foreign market value shall be converted into United States currency as of the date of exportation.

(*f*) Where the exporter's sales price is in a foreign currency and the foreign market value is in a different foreign currency, then both the exporter's sales price and the foreign market value shall be converted into United States currency as of the date of exportation.

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PART IV.—*Revocation of previous regulations.*

27. T. D. 38742, in so far as it relates to regulations promulgated for the enforcement of the antidumping act, is hereby revoked.

(106085) ELMER DOVER, *Assistant Secretary.*

(T. D. 39166.)

The use of Government-owned vehicles for motor transportation.

TREASURY DEPARTMENT, *June 17, 1922.*

To Collectors and Other Customs Officers:

Circular No. 139 of the 6th instant, regarding the use of Government-owned vehicles for motor transportation whenever possible, is published below for the information and guidance of customs officers.

(108800) ELMER DOVER, *Assistant Secretary.*

[1922—Circular Letter No. 139, Chief Clerk.]

TREASURY DEPARTMENT,
Washington, June 6, 1922.

To all Officers of the Treasury Department:

Bulletin No. 17, by Col. H. C. Smither, chief coordinator, issued under date of May 31, 1922, is promulgated below for the information and guidance of all concerned:

"1. Circular No. 35, Bureau of the Budget, dated September 23, 1921, contemplated that Government departments and establishments in temporary need of motor transportation should call upon the area coordinators, who would make every effort to secure Government-owned vehicles to meet their requirements.

"2. In general this has been the case, but to prevent misunderstanding it is deemed advisable that the heads of all departments notify their various agencies that no commercial vehicles should be hired until the area coordinator has been applied to and has advised them that their requirements can not be supplied by Government-owned vehicles.

"3. The provisions of paragraph (2) above should be adhered to except in the following cases:

"(*a*) In an emergency where there is insufficient time to communicate with the coordinator.

"(*b*) Where the fact has been established and it is definitely known by the department desiring the use of motor vehicles that none are available from another branch of the Government, either at point where needed or in the vicinity of the point of delivery.

"4. When a governmental agency contemplates making a shipment by motor transportation from one city to another, and there is no Government-owned motor transportation available at the point of shipment, it is frequently possible that Government-owned motor vehicles may be obtained at destination and brought to the point where needed.

"For example: A Government agency at Philadelphia desires to make a shipment by motor trucks to Washington. Upon investigation the area coordinator at Philadelphia finds that there is insufficient Government-owned motor transportation available in that city to accomplish the purpose. He communicates this fact to the coordinator, District of Columbia, who ascertains that the required transportation is available in or near Washington, and arranges to have the necessary number of vehicles report to the area coordinator at Philadelphia. At the same time he notifies the coordinator for traffic of the movement in order that the latter may, if possible, provide cargoes for transportation from Washington to Philadelphia, thereby utilizing the motor equipment to its full effectiveness in a manner similar to that employed by commercial trucking companies."

Respectfully,

A. W. MELLON,
Secretary of the Treasury.

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(T. D. 39167.)

Foreign currencies—Rates of exchange.

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), emergency tariff act of May 27, 1921.

TREASURY DEPARTMENT, *June 19, 1922.*

To Collectors of Customs and Others Concerned:

The appended table of the values of certain foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), act of May 27, 1921, during the period from June 9, 1922, to June 15, 1922, both inclusive, is published for the information of collectors of customs and others concerned.

ELMER DOVER, *Assistant Secretary.*

Values of foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), emergency tariff act of May 27, 1921.

PERIOD JUNE 9 TO 15, 1922, INCLUSIVE.

Country.	Name of currency.	June 9.	June 10.	June 12.	June 13.	June 14.	June 15.
Europe:							
Austria	Krone	$0.000065	$0.000066	$0.000060	$0.000048	$0.000056	$0.000054
Belgium	Franc	.0840	.0838	.0827	.0824	.0823	.0827
Bulgaria	Lev	.007446	.007425	.007483	.007433	.007463	.007433
Czechoslovakia	Krone	.019368	.019353	.019322	.019181	.019108	.019122
Denmark	do	.2198	.2200	.2196	.2186	.2184	.2181
England	Pound sterling	4.4962	4.4984	4.4931	4.4818	4.4723	4.4751
Finland	Markka	.02145	.021425	.021363	.021288	.021438	.021438
France	Franc	.0908	.0905	.0891	.0882	.0879	.0883
Germany	Reichsmark	.003436	.003331	.003108	.003175	.003184	.0032
Greece	Drachma	.0421	.0420	.0419	.0413	.0408	.0401
Holland	Guilder	.3903	.3905	.3909	.3904	.3892	.3892
Hungary	Krone	.001168	.001151	.001113	.000986	.000953	.000981
Italy	Lira	.0515	.0514	.0507	.0500	.0497	.0506
Norway	Krone	.1755	.1764	.1756	.1738	.1722	.1711
Poland	Mark	.000251	.000249	.000248	.000241	.000240	.000236
Portugal	Escudo	.0767	.0762	.0767	.0757	.0763	.0759
Rumania	Leu	.006763	.006761	.006748	.006684	.006684	.006647
Serbia	Dinar	.014464	.014471	.014436	.014286	.014043	.013829
Spain	Peseta	.1581	.1582	.1582	.1577	.1575	.1576
Sweden	Krona	.2598	.2602	.2602	.2596	.2589	.2590
Switzerland	Franc	.1913	.1914	.1911	.1908	.1905	.1906
Yugoslavia	Krone	.003614	.003622	.003611	.003568	.003508	.003456
Asia:							
China	Chefoo tael	.8363	.8321	.8300	.8308	.8333	.8333
Do	Hankow tael	.8363	.8321	.8250	.8275	.8283	.8283
Do	Shanghai tael	.7945	.7954	.7969	.7978	.7995	.7988
Do	Tientsin tael	.8417	.8354	.8333	.8358	.8375	.8367
Do	Kongkong dollar	.5787	.5804	.5781	.5798	.5827	.5839
Do	Mexican dollar	.5790	.5748	.5760	.5763	.5778	.5780
Do	Tientsin or Peiyang dollar.	.6042	.5850	.5850	.5883	.5896	.5875
Do	Yuan dollar	.5908	.5758	.5725	.5783	.5754	.5783
India	Rupee	.2914	.2917	.2913	.2910	.2909	.2906
Japan	Yen	.4770	.4768	.4765	.4774	.4787	.4798
Singapore (S. S.)	Dollar	.5146	.5125	.5117	.5158	.5142	.5100
North America:							
Canada	Dollar	.990766	.990808	.990771	.991049	.991063	.991180
Cuba	Peso	.99875	.998125	.998438	.998828	.998828	.998438
Mexico	do	.485675	.48335	.4840	.485925	.485781	.484575
Newfoundland	Dollar	.988438	.988281	.988828	.988984	.988438	.988984
South America:							
Argentina	Peso (gold)	.8265	.8260	.8260	.8253	.8237	.8186
Brazil	Milreis	.1384	.1390	.1383	.1384	.1382	.1373
Uruguay	Peso	.8230	.8263	.8222	.8219	.8188	.8151

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(T. D. 39168—G. A. 8543.)

Reappraisement of St. Gall laces.

Merchandise exported by its manufacturers in St. Gall, Switzerland, for delivery to American purchasers at agreed prices which include cost, freight, insurance, and duty, in fulfillment of orders whether given and accepted by the manufacturers in St. Gall or placed with and accepted by the selling agents of such manufacturers in New York, is sold for export from Switzerland to the United States within the meaning of the language of section 302 of the emergency tariff act of May 27, 1921; and such prices, after deducting therefrom the costs, charges, and expenses, including import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States, being higher than the prices at which such or similar merchandise is sold or freely offered for sale in the country of exportation, must be taken as the basis for appraisement.

BROWN, General Appraiser, dissenting, holds—

(1) That sections 301, 302, and 303 of the emergency act of May 27, 1921, deal only with sales in the home market of the foreign country for export to the United States, making them controlling if higher than sales therein for home consumption, where before they constituted merely part of the evidence from which "foreign market value" in the country of exportation was derived upon appraisement. This act did not radically change the basis of ad valorem value to a United States selling price from which to count back constructive value in the foreign market whenever the result of so doing would be higher than the sales therein for home consumption.

(2) For customs purposes the place where title passes determines whether a sale is made in the foreign market place for export to the United States or, on the other hand, in the domestic market of the United States, irrespective of other terms in the contract f. o. b. or c. i. f., or duty paid vel non, and irrespective of where the negotiations are conducted, and irrespective of whether the goods are sold from an existing stock or, by the terms of an executory contract, are to be manufactured.

(3) The sales here in question upon which appraisement is based are therefore not "export sales," but sales in the United States market, and the admitted foreign value for "home consumption" should control in taking duty. (United States *v.* Doherty, 27 Fed. 730, cited.)

United States General Appraisers, New York, June 13, 1922.

In the matter of reappraisements 5251-A, etc., of Amrein, Freudenberg & Co. et al.

Before Board 1 (McCLELLAND, SULLIVAN, and BROWN, General Appraisers; BROWN, G. A., dissenting).

[Modified.]

John R. Rafter for the importers.

William W. Hoppin, Assistant Attorney General (*John G. Lerch*, special attorney), for the United States.

McCLELLAND, General Appraiser: The merchandise covered by these appeals consists of St. Gall laces. The invoice and entered values are expressed in Swiss francs and the appraised and reappraised values are expressed in United States currency.

At the final hearing counsel offered as part of the record a stipulation in the form following:

It is hereby stipulated and agreed:

I. That the appraisement was made under section 302 of the emergency act at the net prices at which the orders for the merchandise were placed and accepted, less

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an allowance intended to cover costs, charges, and expenses, and United States import duties incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States.

II. That whether the orders for the merchandise were placed with and accepted by the manufacturer's agents in New York, or placed with and accepted by the manufacturers in St. Gall, they would have been received at the same prices expressed in dollars and cents and subject to the same terms and conditions.

III. That if the appraiser's interpretation of section 302 of the emergency tariff act as expressed in paragraphs 1 and 2 hereinabove is correct, then the export value of the items in question is equal to the corrected values noted in red ink on Exhibits 3 and 6.

IV. That the invoice and entered values correctly represent the actual market values for home consumption in the country of exportation.

This stipulation is intended to supplement the record heretofore made.

Thus the issue is narrowed to a construction of the language of section 302 of the emergency tariff act of May 27, 1921. That is to say, if the merchandise was sold in St. Gall for export to the United States within the meaning of the language used in section 302, the prices obtained therefor, they being higher than the prices at which such or similar merchandise was sold or freely offered for sale in St. Gall at the time of exportation in usual wholesale quantities in the ordinary course of trade, after making the deductions therefrom, shall be taken as the basis for appraisement as provided in section 303 of the same act.

The United States appraiser in making his appraisements treated the transactions which resulted in these importations as sales for export and accordingly found values higher than the entered values which are agreed to be equal to the market values of such merchandise sold for home consumption at the time of exportation.

Appellants presented no evidence to the general appraiser below and consequently the appraised values were affirmed.

The cases were fully tried out before this board, however, and both the facts and the law ably presented.

As to the material facts there is little dispute. The appeals were tried together and most of the testimony relates to the importation of Amrein, Freudenberg & Co. (Inc.), but there is sufficient in the record to show that the material attendant facts as to each importation are the same, and the relations of the consignees to their respective manufacturers and shippers are substantially the same. Each of the former is the exclusive selling agent in the United States of the latter. All merchandise exported to the United States by the manufacturers, regardless of whether the orders therefor be taken in the United States or in Switzerland, is sold at prices expressed in United States currency, cost, insurance, freight, and duty paid, f. o. b. at purchaser's place of business, New York City, or f. o. b. railroad station New York City if the purchaser's place of business be at a point beyond the limits of that city. It also appears that

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the merchandise is billed by the consignees in their own names to the purchasers and payments are in every case made direct to them. Title to the merchandise remains in the St. Gall manufacturers and shippers until actual delivery to the purchaser in New York as aforesaid, and they bear all loss or damage occurring in transit.

Minimum sale prices for sales by these agents in the United States are fixed by the manufacturers, but the agents may sell for prices above such minimum and retain such excess in addition to their regular commission. In case of default in payment by a purchaser the consequent loss is shared by the manufacturers and the agents.

As we proceed to consider the legal aspects of the situation thus presented it must be noted that the orders for the contents of case 582, covered by appeal 5279–A, were placed in St. Gall, the contract price being in United States currency duty paid, f. o. b. purchaser's place of business New York City.

QUERY: Under the foregoing detailed circumstances were the sales of the merchandise in question such as are to be considered as having been made in St. Gall and therefore sales for export within the purview of section 302, supra, or were they such sales as must be held to have been, either for the reason that they were consummated in the United States, or because of any other attending circumstance, to be considered *not* sales for export as contemplated by the Congress in framing said section, but that the merchandise shipped pursuant to orders therefor were mere consignments by principals to agents which must be appraised at the market value or wholesale price of such or similar merchandise in the principal markets of the country of exportation on the date or dates of shipment?

"Export value" is defined in section 302 as—

> * * * the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, *for exportation to the United States.* * * *

Under this definition it seems clear that if merchandise in a foreign country is neither sold nor *freely offered for sale* to all comers, to be exported to the United States, there can be no export value within the meaning of section 302.

We have no evidence of actual sales of this class of merchandise in St. Gall for export to the United States at f. o. b. prices sellers' factory or point of shipment in Switzerland to the United States with passing of title to the merchandise at either of such points to the purchaser.

The prevailing practice of manufacturers of such merchandise who sell to United States purchasers seems to be to sell, as heretofore indicated, at a price laid down at the purchaser's place of business in

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New York City, or at the railroad station in said city if the purchaser's place of business is beyond the limits of that city.

Counsel for appellants urges with much force that regardless of whether the orders for this merchandise were placed with the selling agents in New York or with the manufacturers in St. Gall, the results are the same in that all deliveries to purchasers are made through the American selling agents, title to the merchandise remaining in the seller until actual delivery either at the buyer's place of business or the railroad station, as aforesaid. He contends further that when the minds of buyer and seller meet, that is to say, when the order is placed by the buyer and accepted by the seller for merchandise not yet in existence, such as was the case when all of the merchandise here involved was ordered, such placing and acceptance of the order constituted a mere executory contract, and that the actual executed sale dates from the time of delivery and transfer of the merchandise to the purchaser. In support of this contention appellants' counsel submits a long line of authorities. Among these are the following:

A contract for the present sale of goods, thereafter to be manufactured or acquired by the seller, can operate only as an agreement to sell.

See Burdick on Sales, pp. 12, 24, 71 and 72.

See also West Jersey R. R. Co. *v.* Trenton Car Works Co., 32, N. J. L., 523.

The rule in relation to the acts necessary to pass property to the purchaser in goods ordered to be manufactured is thus stated by Story in his treatise on Sales, viz.:

Where the contract of sale is executory, and for an article which is not in existence at the time of the sale, but is to be manufactured or made, or is to be grown, no property therein passes to the vendee until the thing is not only completely finished and ready, but is either actually delivered to him, or at least is set aside and appropriated to him and accepted by him. Nor does it make any difference that the price is advanced. * * * Until the article is set aside for the vendee and delivered to or accepted by him, he acquires no property therein, and the vendor may, if he chooses, dispose of it to another person, unless the vendee employed a superintendent or furnished materials. * * * Goods manufactured to order must not only be set apart but they must be delivered, or they must be accepted or approved by the vendee before they become his property, or are at his risk. (Gammage *v.* Alexander, 14 Tex. 414, at 420.)

If this proceeding could be considered as an action at law to determine simply whether the negotiations up to and including the placing and acceptance of the orders for the merchandise in question amounted to actual executed sales, the answer would have to be that there had been no such sales, but the issue here is very different.

Was the merchandise sold for export to the United States? If so, the values found below must, under the stipulated facts, be affirmed.

What was the purpose of the Congress in framing section 302, supra? Was it not in the minds of the framers to provide a method of fixing export values on merchandise shipped under such circumstances as those attending the shipment of this merchandise?

It may be said to be a matter of common knowledge, at least common to all who are familiar with international commerce between

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foreign countries and the United States, that much of the merchandise imported into the United States from several European countries comes under conditions similar to those under which this merchandise came. That is to say, that it comes as the result of orders placed either directly with the foreign seller or with his selling agent in the United States, and delivered to the buyer through such selling agent, just as this merchandise was delivered.

Our view is that the deliberate purpose of Congress in framing and passing the emergency act was to treat such transactions as sales for export. This being our view we must also conclude that this is not a case for quibbling over technical definitions as to the difference between an executory contract and an executed contract. The placing of these orders, even at laid-down prices at New York, either directly with the manufacturers or with their selling agents, and the acceptance and subsequent filling of such orders by the shipment of the merchandise constituted sales for export within the provisions of section 302, and we therefore, in harmony with the third clause of the foregoing stipulation, find the agreed corrected values as shown in the figures in red ink on collective Exhibit 3–A to 3–I, inclusive, and Exhibit 6.

DISSENTING OPINION.

BROWN, G. A.: It is a matter of common knowledge that before the World War merchandise exported by many foreign countries to the United States was frequently sold by the foreign seller for a less price than that charged to his home trade. Also that since, due to depreciated currency or other trade causes, more was charged for exported merchandise than for the same goods sold at home. To meet that change in practice by sections 301 to 303 of the emergency tariff act of May 27, 1921, a definition of "export value" was made, and the rule of appraisement for ad valorem duty purposes was changed from the home market of the foreign country to that value or the newly defined export value, whichever was higher. This seems the manifest purpose of the new provisions.

SEC. 301. That whenever merchandise which is imported into the United States is subject to an ad valorem rate of duty or to a duty based upon or regulated in any manner by the value thereof, duty shall in no case be assessed on a value less than the export value of such merchandise.

EXPORT VALUE.

SEC. 302. That for the purposes of this title the export value of imported merchandise shall be the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less the

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amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States, and plus, if not included in such price, the amount of any export tax imposed by the country of exportation on merchandise exported to the United States.

REFERENCES TO "VALUE" IN EXISTING LAW.

SEC. 303 (*a*). That wherever in Title I of this act, or in the tariff act of 1913, as amended, or in any law of the United States in existence at the time of the enactment of this act relative to the appraisement of imported merchandise (except sections 2874, 2976, and 3016 of the Revised Statutes, and section 801 of the revenue act of 1916), reference is made to the value of imported merchandise (irrespective of the particular phraseology used and irrespective of whether or not such phraseology is limited or qualified by words referring to country or port of exportation or principal markets) such reference shall, in respect to all merchandise imported on or after the day this act takes effect, be construed to refer, except as provided in subdivision (*b*), to actual market value as defined by the law in existence at the time of the enactment of this act, or to export value as defined by section 302 of this act, whichever is higher.

(*b*) If the rate of duty upon imported merchandise is in any manner dependent upon the value of any component material thereof, such value shall be an amount determined under the provisions of the tariff act of 1913, as in force prior to the enactment of this act.

Sales take place in the following ways:

(1) F. o. b. foreign country, similar to domestic sales therein, the title passing there upon the appropriation of the goods to the contract.

(2) C. i. f. New York or other American port, either duty paid or not. Here the title also passes on delivery to carrier in the foreign country. See Mee *v.* McNider (109 N. Y. 500); Thames, etc., Insurance Co. *v.* United States (237 U. S. 19); Easton *v.* Wostenholm & Son (137 Fed. 524).

(3) By direct sale in the United States through an agent in America (or delivered through him) in the circumstances as here related by Judge McClelland's opinion in the case before us, or in circumstances similar in legal effect thereto.

The two former are different forms of sales for export, the latter a sale in the United States market the same in effect as if a foreign shipper sent his goods here and after arrival sold them in the United States at what would then be neither foreign market value nor export value, but a United States (domestic) selling price.

The two export sales count from the foreign market as a basis and naturally bear a definite relation to each other, being in effect the same kind of sale upon different terms, the second one including freight, insurance, and perhaps duty and other charges, naturally counting back with some certainty to the other.

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The third, however, being a sale in a different market necessarily including the risk of loss to that market bears no real relation to the other two.

This was clearly shown by Judge Addison Brown in United States v. Doherty (27 Fed. 730), where he said, pages 735 and 736:

There is nothing in the record in this case, or in the correspondence or papers produced in evidence that shows that the answer desired, namely, the price in dollars at which the manufacturers contracted to deliver certain similar goods at the defendant's store in New York, was in any way material, or could be lawfully considered by the appraiser in ascertaining the foreign value of this importation. Except in cases of fraud or concealment, or in the absence of the ordinary and appropriate means of information as to the foreign value, evidence of this kind, in suits growing out of the alleged undervaluation of goods, where the question to be tried is precisely similar, has been uniformly held to be incompetent. The evidence in this case shows that the goods in question were still the goods of the foreign manufacturers. They were imported into this country by them; the goods had not been delivered; they were sold to the defendant's firm under an executory contract; and they had not been accepted by the witness, or even examined. In the Sherry Wine Cases, 2 Ben. 250, where this point was raised, Blatchford, J., in a careful charge, instructed the jury that unless the price named in New York was adopted for the purpose of concealing the real foreign price, it must be disregarded, because "it had nothing to do with the case." Similar evidence was excluded in the Champagne Cases (1 Ben. 244).

Upon the trial of the present case the appraiser was called as a witness. He did not even testify that he deemed an answer to this inquiry to be material to the appraisement. There was no allegation of concealment; no proof or suggestion of any inability to ascertain the foreign value in the ordinary ways. It was admitted that there was no element of fraud in the case, and nothing exceptional in the circumstances is intimated. It does not in any way appear how much or how little other evidence the appraiser may have had as to the market value in the principal markets of France. The value there, not here, was the question, and the only question, for his ultimate decision. Where no reasons appear, such as concealment or fraud, or the absence of the ordinary appropriate proofs, that would render the contract price of delivery in New York competent, I can not regard the enquiry as a reasonable one, or within the limits of the appraiser's authority. There are many elements that enter in an agreement made in a foreign country for the delivery of goods at a future time in New York, at a New York price, that make the New York price no criterion of the market value "in the principal markets" of a foreign country at the time of exportation. By making various allowances and deductions, as for interest, for freight, for differences of time, changes of circumstances, and possible fluctuations in the market prices, some approximation, doubtless, to the presumptive foreign market value at the time of exportation might be arrived at. But that is resorting to very roundabout and uncertain methods, which are neither reasonable nor justifiable except upon the failure of proper means of enquiry. It is for these reasons that such evidence is ordinarily legally incompetent. It is rejected by the courts, not upon any formal or technical grounds, but because of its irrelevancy, remoteness, and uncertainty; and the same objections are as applicable upon an appraisement as upon a judicial trial. In either case there must be proof of special circumstances to make it reasonable and competent; and there was no such proof here.

This forceful exposition should forever make clear the radical difference between sales in the United States market and sales in the home market of the foreign country. It conclusively demonstrates the

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impossibility of calculating even approximately from one to the other, by attempting, by fixed rule, to subtract elements in the one not present in the other.

Trade and market conditions must necessarily be so diverse in the two countries (aggravated in effect by the time consumed in shipment) that the foreign and domestic sale can never bear such direct mathematical relationship to each other.

At the time Judge Addison Brown rendered this learned opinion there was no provision for using the United States selling price as a basis for fixing the dutiable ad valorem value.

That provision first appeared in the act of 1897. There the language of section 11 of the customs administrative act of 1890 was amended to include a United States selling price provision which seemed to relate only to goods for which there was no ascertainable value in the home market of the country from whence exported. This provision, however, under a broad construction of the words "such merchandise" was, in Beer *v.* United States (1 Ct. Cust. Appls., 484, T. D. 31526), disassociated from the context and given a broader scope as authority to the local appraiser, or the board on reappraisement appeal, to consider United States selling prices generally as some evidence from which a value could be arrived at by calculation.

But that provision thus broadly interpreted evidently did not meet with favor and so it was changed in the next tariff act, August 5, 1909. In that act, subsection 11 of section 28, and the following one of October 3, 1913, paragraph L, the United States selling-price provision was strictly limited in language (subject to no other construction) to merchandise consigned for sale in, or sold for export to, the United States which was not sold or freely offered for sale in the home market of the foreign country; in other words, to goods made solely for American consumption which the manufacturer could not sell or refused to sell in his home market.

In such cases for special reasons United States selling price was directed to be used as a minimum basis below which calculated cost of production value could not fall, manifestly as a discouragement to their so dealing.

It purposely made their imports subject to a special arbitrary *substituted* rule of value. In a class of cases where *real* foreign market value was impossible of ascertainment this rule of *constructive* foreign market value by such counting back from the United States selling price was set up and made applicable.

This special rule of paragraph L for using United States selling price as a basis in a limited class of cases is not broadened in scope, but on the contrary its application is further limited by the emergency tariff act of 1921. That act is designed on the contrary to cover a different class, namely, merchandise for which there is a market for

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home consumption in the foreign country different from the *export* sales price to the United States.

For the special purposes above stated, one rule for counting back from a United States sale price is provided in paragraph L, act of 1913. For totally different purposes a *different rule* for counting back from a delivered duty paid c. i. f., export sale from the country of shipment, is provided in the statute before us.

Commissions and profits are referred to in paragraph L as an item in so counting back to get constructive value on an arbitrary minimum basis. This recognizes in some slight degree the elements referred to by Judge Addison Brown, supra, which make a sale in the United States market and a sale in the foreign market (either for home consumption or export) totally unrelated in trade conditions and values and impossible of accurate reduction, the one from the other, by any fixed rule of mathematical comparison.

This general view of the whole subject, keeping in view the nature of the different classes of sales, when title passes in each class, the differences between this act and those acts relating (in very limited scope) to United States selling prices, and the radical difference between the evils to be corrected and the situation to be met by the two classes of provisions, is a complete demonstration that Congress in the emergency act did not have in mind at all any reference to paragraph L or the United States selling price permitted to be used thereby, but was dealing as the act states with *export* sales alone in the country of production. Not wishing to discourage or hamper the use of c. i. f., duty paid, so-called, delivered, sales of that *export* character made in the foreign market for shipment to America, Congress covered them, in the alternative, by the "counting back" provisions of paragraph 302. They were not treating or considering sales in the *American market*, such as we have before us, where the shipper takes all the risk of transport and of change in market conditions for sale in the United States where alone title passes.

But it is suggested that the Congress in fixing the basis of valuation for duty purposes was not considering only completed sales, but executory contracts of sale also, and offers to sell (in the absence of sales) as evidence of value. And this is certainly true. In the provision for export value Congress clearly intended that *offers to sell for export*, as well as *actual sales for export*, should be evidence of such value.

But that is not to say that the place (rather than the time) of the passage of title, no matter where the completed sale or executory contract is negotiated, does not determine (as I hold it does) the character of the sale or executory contract itself as being, on the one hand, a sale or offer to sell "for export to the United States," title passing abroad by delivery to the carrier on appropriation of the

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goods to the contract, or, on the other hand, a sale or offer to sell actually within the markets of the United States where title passes, which I hold this to be.

The application of this rule for distinguishing "export value" from a sale in the United States market does not depend upon whether the contract is for an executory sale of goods yet to be manufactured, or a sale of existing goods in praesenti. It would apply as well to a sale of goods out of stock.

It is a United States sale, if in fact title passes in our market, no matter where it is negotiated, and likewise, on the other hand, it is an export sale if the goods are in fact sold in the foreign market for export with title passing there, no matter what the details are concerning payment of transportation charges, duty, etc., either f. o. b. or c. i. f.

By the express terms of the new statute the sale or offer to sell must still be *in the foreign market place* for export to the United States.

For it is apparent that the expression in the definition of export value in the new act "sold or freely offered for sale to all purchasers *in the principal markets of the country from which exported* * * * for exportation to the United States," has only the limited or qualified meaning here set out of a sale or offer to sell where title passes or is to pass in the foreign market.

Otherwise if (as the Government contends) the sales here in question (whether negotiated in New York or in St. Gall) providing for passage of title in the United States market are export sales in the customs sense then all importations (as well as all consigned goods) are subject to possible customs valuation on the basis of the United States selling price (counting back therefrom).

This presupposes that Congress in order to meet the new foreign practice of selling higher for export has incidentally and unwittingly revolutionized our valuation system, changed the plan established for a hundred years, made applicable alike to high and low tariffs and founded all customs valuation primarily on a new basis calculated from sales in the United States market whenever (practically always) the resulting value is above the home consumption price in the foreign country. Such radical and far-reaching interpretation of the language actually used produces, in the circumstances, an absurd result and therefore can not be imputed to Congress in passing a mere "export value" provision.

On the other hand to make export sales in the foreign market, if higher than home consumption sales in said market, determinative of ad valorem duty (which is all Congress meant to do by the emergency act) is not a radical departure from previous practice. Sales in the home market *for export* are only one form of "home mar-

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ket" sales. Frequently considered as such (without other evidence) they have constituted in the past the basis of innumerable findings of "home market value" by the board.

In fact every consular invoice of "purchased goods" whether f. o. b., c. i. f., or duty paid, records an export sale of such goods in the foreign market place, and as such has necessarily always been considered by the board as evidence of the foreign market value of those goods so invoiced. This has always been the rule. As far back as 1 Benedict 241, in the case of 3,109 cases of champagne, also reported in 23 Fed. Cases 1468, at page 258 Judge Blatchford held the offer of certain lowest prices *for export* permitted the jury to infer a home market at the prices so fixed.

In this case Judge Blatchford also admitted proof of the purchase by an American in London negotiated with the French shippers' agent there for export from France, f. o. b. Havre, as evidence of value in the French market. Neither its negotiation in England nor the fact that it was "for export" prevented this from being a sale in the French market where title passed; propositions apparently so elementary as not to deserve discussion.

This finding is doubly significant in view of the rule recorded on page 244 that purchases from an agent of the shipper in New York (evidently similar to those before us) were not admissible as evidence of foreign market value.

The rule of the new statute simply expands the value of export sales as evidence and makes them now (if higher) controlling when before they were always admissible as part of the evidence from which (along with sales for home consumption) foreign market value in the country of production was derived upon appraisement.

This is very different from changing the basis of appraisement for taking duty to a United States selling price from which to count back.

Had Congress meant this it would have undoubtedly been expressly provided in direct language that all imported merchandise should be appraised by counting back from the United States selling price if (as is usually the case) that calculation produced a higher value than the price for home consumption in the foreign country.

Yet the majority finding gets this possible effect merely from the language in the new act defining "export value."

At first blush it might possibly be claimed that the effect of paragraph 303 broadens the application of the United States selling price as a minimum for calculation under paragraph L so as to here sustain the appraised value less 8 per cent (the arbitrary minimum allowance therein for commission). This, on the theory that such basis might be applied in the absence of either a home market value *or an export value.* But careful consideration of the effect of section 303

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shows that on the contrary it would further limit the application of the United States selling price provision of paragraph L to cases where there was *neither* a home market nor an export value. Paragraph L is therefore plainly not applicable here, where there is an admitted home market value in St. Gall. It seems impossible that by the language of the export-value provision of section 302 the Congress intended thereby to impose a rule of value even higher than the constructive market value of the last clause of paragraph L and not allowing the deduction for commission therein allowed for.

The last clause of section 302 must refer to a value which as there applied as a basis would in practice result in something closely resembling in amount an f. o. b. export price, and not some widely different rule.

Congress was not intending to place a premium upon f. o. b. export shipments or to tax on a higher basis and thus discourage the use of New York delivered c. i. f. contracts for export sales.

There would be no reason for such distinction and none was intended or expressed.

All this strongly confirms the view that the counting back provisions of section 302 must refer to something else than a United States selling price, namely, to a c. i. f. New York delivered price (either duty paid or not) with title passing abroad, upon which basis much export business from foreign countries is conducted.

In this view it follows that in the absence of an export value shown to be higher than the home market value the latter must govern and the entered values stipulated to correctly represent the "actual market value for home consumption" should, in my opinion, be sustained.

Judge Lacombe, in Muser *v.* Magone (41 Fed. 877), held that cotton embroideries ordered through a commissionaire to be manufactured, bleached, etc., were thus sold by him in the home market of St. Gall, Switzerland. He was clearly moved to that determination by the fact that *title passed in St. Gall*, for he said:

> I am, however, of the opinion—and that I consider the controlling point of this case—that this importation is not the kind of importation contemplated by section 9 at all [the cost of production provision]. What section 9 is evidently intended to provide for is the case where an article made in a foreign country is not sold there, but is brought to the United States for sale. Such does not appear to be the case here. So far as the evidence shows, anyone can go to St. Gall and can there buy these very cotton embroideries—not precisely of the same pattern as Mr. Muser's, but he can get a selection from a large variety of assorted patterns, and, upon paying the cost of the cloth, stitching, bleaching, cutting up, and boxing, and the additional charge, he can obtain these goods in St. Gall. He may have to wait for a week, or three weeks, or five or six weeks, *but the title to the goods changes hands in St. Gall*, and the purchaser may have them delivered to him there, if he chooses to wait and take them. (Italics mine.)

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The additional charge referred to is that of the commissionaire.

The Supreme Court, in affirming his ruling in 155 U. S. 240, adopts his language above quoted in holding that the appraisers had in reality found, and properly found, a market value for home consumption in St. Gall and had not, as Mr. Muser claimed, misapplied or acted upon the cost of production provision, section 9 of the act of March 3, 1883.

If the *passage of title in St. Gall* determined that transaction to be a sale in the "home market" of Switzerland, manifestly it would still remain a sale in that market if for export or if negotiated by correspondence from New York, and it seems to conclusively follow that the *passage of title in New York* would determine the transactions before us to be sales in the United States market and not "export sales" from the "home market" of Switzerland, which latter the majority opinion holds them to be.

It is abundantly shown by this record and nowhere denied or disputed that in the transactions before us which are here used as the basis for calculating customs value *title passed in the United States*. This is clearly stated on page 2 of the majority opinion. The sole issue before us, therefore, is the legal question as to whether in spite of that these transactions can be treated as sales or executory contracts to sell *in St. Gall, the foreign market place for export to the United States*. There is no question of fact in dispute in this case.

(T. D. 39169—G. A. 8544.)

Embroidery Machines.

Machines constructed and primarily designed and intended to do embroidery work are embroidering machines in the tariff sense, even though they may also be adaptable for plain sewing. Applying that rule, the machines in question are embroidering machines within the meaning of paragraph 165 of the act of 1913, as classified by the collector, and not sewing machines, as claimed by the importers. As stated by the court in Durbrow *v.* United States (9 Ct. Cust. Appls. 148; T. D. 37993): "The question is not so much what it does as what it primarily was constructed and designed to do."

United States General Appraisers, New York, June 13, 1922.

In the matter of protests 936057, etc., of Durbrow & Hearne against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Masters & Levett (*Benjamin A. Levett* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Samuel Isenschmid*, *Frank P. Wilson*, and *Samuel M. Richardson*, special attorneys), for the United States.

Before Board 2 (FISCHER, HOWELL, and WELLER, General Appraisers.)

FISCHER, General Appraiser: These protests cover certain machines upon which duty was levied at the rate of 25 per cent ad valorem

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under paragraph 165 of the act of 1913 as embroidery machines, but which are claimed by the importers to be properly entitled to free entry under paragraph 441 of said act as sewing machines.

In a previously decided case, G. A. 7582 (T. D. 34607), involving a similar issue, this board said:

Whether a sewing machine is an embroidery machine, or vice versa, must be determined by a knowledge of the character of the construction of its mechanism and of the primary purpose for which it was designed. It is a matter of common knowledge that a great number, if not all, of the various types of ordinary sewing machines, by the manipulation or adjustment of one or more of their attachments, may be rendered competent to perform fancy stitching or embroidered work. But such an extraordinary, exceptional, or unusual use to which such a machine might possibly be made adaptable could hardly serve as a potent factor in determining its commercial or dutiable status. The fact remains that it is a machine primarily constructed and designed for sewing fabrics—a sewing machine—and any other use thereof is purely incidental and devised merely to meet some household emergency. Such a sewing machine would be wholly inadequate to do the work for which the embroidery machine in trade and commerce is specially constructed and designed. As sewing machines are specially constructed and primarily intended to sew fabrics, so, also, is it the chief function of embroidery machines to stitch upon fabrics and other articles various forms of fancy and embroidered needlework.

The Standard Dictionary defines a sewing machine as "a machine for sewing; a machine for stitching ordinary fabrics." And in Knight's Mechanical Dictionary is given the following definition of an embroidery machine:

A form of sewing machine in which the cloth is moved beneath the reciprocating needle bar according to the requirements of the tracing while the needles and hooks retain their respective relative positions above and below the fabrics.

While it is true that each of the machines here under discussion bears a striking similarity in use to a sewing machine in that both classes of machines employ needles and thread and are capable of sewing fabrics, nevertheless the proof here submitted clearly establishes the fact that these particular machines were primarily constructed and intended to do all kinds of festooning and embroidery work, and that they were advertised and sold by protestants as and under the name of embroidery machines.

As already stated, all machines operating needle and thread are species of sewing machines, just as embroidery machines, as defined by Knight, are forms of sewing machines, but the latter may be distinguished from the former class by reason of its construction and the primary design of its manufacturer as to its principal function or use.

In Durbrow *v.* United States (9 Ct. Cust. Appls. 148; T. D. 37993), the above reasoning of the board is quoted in extenso and approved, "because," as stated by the court, "in our view the language is well chosen to express the true rule of distinction between embroidering and sewing machines." And in the present case we believe counsel for both parties made an earnest endeavor to apply said rule or test of classification to the machines under consideration.

Of the various types of machines on the invoices, but three are covered by the protests, to wit, Nos. 1, 11, and 23. No. 1 is represented by a machine herein received in evidence and marked "Exhibit 1." It is precisely in the condition in which it was imported, and is accompanied by its attachments and extra parts. This machine is described by one of the witnesses as the "parent machine

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of them all," and as "the basis on which all the machines we import from this concern are constructed."

Concerning the other two types of machines, Nos. 11 and 23, respectively, the same witness states that the latter "has an attachment on it for producing an embroidery stitch called cording," while the former has, in addition to the cording stitch device, "an attachment for sewing on braid, which is carried on a braid bobbin."

The witness testified that he has been engaged in the sewing and embroidering machine business for over 40 years, and that he has qualified as an expert in patent cases involving said merchandise. Asked concerning machine No. 1, he testified as follows:

Q. Will you state what the primary design and purpose of this machine is?—A. As I stated before, first to produce a chain stitch with a single thread of the Wilcox & Gibbs type, and second, it has a feed arrangement so it can feed in any direction. An ordinary plain sewing machine, as it might be called, will feed only in a straight line, and if they want to turn a corner, they have to turn the goods. This machine has a device on it, where by turning a crank you can turn the work around without turning the goods. For instance, you can make a square or a circle on it.

Q. What do you call that feed?—A. Universal feed.

Q. Is that a common feed on sewing machines?—A. On a great many special types it is. For instance, on shoe-patching machines it is, so that they can patch the shoes without turning them around.

Thereupon the witness produced an illustration of a shoe-patching machine made by the Singer Sewing Machine Co. and known as a "universal feed arm machine." He further testified:

Q. Take these machines in question; can they produce embroidery?—A. Only when the operator proposes; the machines themselves produce plain sewing.

Q. How is embroidery produced?—A. The gear handle is attached to the gear shaft and the stop removed from the central tubes, and the operator can follow any design by moving the crank.

Q. Do you know any sewing machine that can not produce embroidery?—A. Practically all sewing machines can be used to produce commercial embroidery.

A number of samples of work done on the three machines in question were then offered and received in evidence, among them a sample of "straight stitching, chain stitching, just as produced on the machine without the interposition of the operator." The witness was then cross-examined by Government counsel:

Q. Mr. Hearne, I understand that this is the most simple form of stitching that you do on the machine of the kind you produce a sample?—A. Yes, sir.

Q. And that applies to all of them?—A. All of the machines I mentioned.

Q. This is just the straight stitching?—A. Yes, sir.

Q. What causes this line to run straight?—A. The machine feeds it right straight along.

Q. There is a feed guide of some kind?—A. It feeds right along.

By Mr. Levett:

Q. If you do not manipulate the machine it will produce a straight line?—A. It will produce a straight line. I offer a sample of stitching done on the well-known Wilcox & Gibbs family sewing machine, which is identical in every respect with the other stitching.

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A sample of applique work was then introduced in evidence as the product of any one of the three machines in question, with the statement of the witness that such work can be produced on ordinary sewing machines only when the work is turned by hand, whereas with the present machines the turning is done through manipulating a handle attached to the machine. Also, the importers produced as products of said machines samples showing three fabrics sewed together, and patchings on burlap bags or sacks.

Furthermore, the witness testified that machine No. 1 in general construction was the same as machine No. 16, described on the invoice as a sewing machine and so classified by the collector; that each of them had a universal feed; that the only difference between the two is that No. 16 uses two threads—a shuttle and needle thread—making what is known as a lock stitch, whereas machines Nos. 1, 11, and 23 use single thread altogether. The witness was questioned further:

Q. What is the primary design, if you can illustrate by the samples, of this machine; what is the purpose? What is the purpose of the kind of sewing for which it is designed to turn out?—A. Its entire purpose is to obviate the necessity of turning the piece of goods when anything beyond straight sewing is done.

Q. Does it differ from the ordinary straight sewing machine except in the universal feed?—A. That is the only difference.

The witness also qualified as being thoroughly familiar with embroidery machines, producing illustrations of some very well known types of Swiss machines. These he stated are generally from 5 to 15 yards long and employ anywhere from 250 to 1,000 needles and shuttles, and are practically incapable of doing any ordinary sewing. In the present machine No. 1, he said, any desired variation from straight sewing would require the attachment of the crank or handle to control the movement of the goods in any intended direction, and that this is equally true of machines Nos. 11 and 23.

Oral testimony and documentary proof in the form of trade catalogues and circulars were introduced with a view to showing, if possible, a commercial designation, uniform, definite, and general in its application, of these machines as embroidery machines. This, however, was not entirely successful, in that it was shown that the machines were invariably known and recognized in trade according to the name of the inventor, and in many instances, the manufacturer thereof, and in some cases by both. For example, there is the Bonnaz machine, and the Cornelli-Bonnaz, Bonnaz being the inventor and Cornelli the manufacturer; also the Brosser machine, etc. We are satisfied that there is no general commercial designation of these machines as embroidery machines.

Harris W. Slater, vice president of the Singer Sewing Machine Co., and for 10 years in charge of its manufacturing plant, testified on

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behalf of the Government that his company makes both sewing and embroidering machines; that its machine No. 114-W-103 is in all material respects similar to the present machine No. 1; and that its said machine is primarily constructed and designed and exclusively employed as an embroidery machine.

Otto J. Ahlstrom also appeared for the Government and proved an exceptionally frank witness. An importer of embroidery machines since 1893, he admitted having at present on file awaiting decision by this board a protest claiming machines similar to the present machine No. 1 to be sewing machines, although he sells his machines to about 35 different industries, largely for ornamentation and embroidery work, and for numbering and lettering linens, etc., in hotels, barber shops, hospitals, and the like. He stated, while machine No. 1 can do plain sewing, it would be disadvantageous to so employ it due to its slowness compared with an ordinary sewing machine—machine No. 1 making but 1,200 stitches per minute as against 2,000 or 3,000 made on any ordinary sewing machine. This witness stated that he has never known machines like No. 1 to be sold as sewing machines.

From a careful reading of the record we believe that it establishes the following facts:

1. That there is no definite, uniform, or general trade name or designation of these machines either as embroidering machines or as sewing machines; that they are referred to commercially either by the name of the inventor, or particular manufacturer, or in some other way.

2. That the primary purpose for which they were constructed and designed is to do embroidery work, and that they are unsuited by reason of their slowness of operation to do the work for which the ordinary sewing machine is constructed and designed.

We therefore hold, as matter of law, that they have been properly classified by the collector as embroidery machines, and that the protests claiming them to be entitled to free entry as sewing machines should be, and hereby are, in all respects overruled.

(T. D. 39170—G. A. 8545.)

Jewelry cases and pads.

1. JEWELRY CASES AND PADS—SILK VELVETS—CONSTRUCTION.

Paragraph 314, tariff act of 1913, provides for "Velvets, plushes, chenilles, velvet or plush ribbons, or other pile fabrics, composed of silk or of which silk is the component material of chief value." *Held:* That that paragraph has reference only to such silk velvets, plushes or other pile fabrics, or velvet or plush ribbons as are imported in the piece or in running lengths, and that articles manufactured from such velvets, plushes, or other pile fabrics do not fall within the provisions of said paragraph.

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2. JEWELRY CASES AND PADS—MANUFACTURES OF SILK.

Jewelry cases and pads composed in chief value of silk velvet are dutiable as manufactures in chief value of silk at the rate of 45 per cent ad valorem under Paragraph 318, tariff act of 1913, rather than under the provisions of Paragraph 314 of said act.

United States General Appraisers, New York, June 13, 1922.

In the matter of protest 941089 of Bernard Judae & Co. against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Barnes, Chilvers & Halstead for the importer.
William W. Hoppin, Assistant Attorney General, for the United States.

Before Board 2 (FISCHER, HOWELL, and WELLER, General Appraisers).

HOWELL, General Appraiser: The appraiser reports that the articles in question consist of "jewelry cases and pads composed in chief value of silk velvet." They were returned by that officer as manufactures of silk velvet and were assessed for duty by the collector at the rate of 50 per cent ad valorem under paragraph 314, tariff act of 1913, which paragraph reads as follows:

314. Velvets, plushes, chenilles, velvet or plush ribbons, or other pile fabrics, composed of silk or of which silk is the component material of chief value, 50 per centum ad valorem.

The importers claim that the articles are properly dutiable as manufactures in chief value of silk at the rate of 45 per cent ad valorem under paragraph 318 of said act.

The record contains a stipulation by counsel for the importers and the Assistant Attorney General that the articles in controversy are composed in chief value of silk velvet. The sole question for determination, therefore, is whether or not the provisions of said paragraph 314 are sufficiently broad and comprehensive to include the articles for dutiable purposes. If they are not, then the articles are properly dutiable as manufactures of silk, as claimed by the importers.

Counsel for the importers contend in their brief filed herein that inasmuch as paragraph 314 provides only for "Velvets, plushes, chenilles, velvet or plush ribbons, or other pile fabrics" composed wholly or in chief value of silk, that paragraph has reference only to such silk velvets, plushes, or other pile fabrics, or velvet or plush ribbons as are imported in the piece or in running lengths, and that articles manufactured from such velvets, plushes, or other pile fabrics, such as the jewelry cases and pads the subject of this litigation, do not fall within the provisions of said paragraph.

In this construction of the statute we concur. It is our opinion that the only logical interpretation that can be given the language of the statute quoted is that Congress, in enacting the provisions of paragraph 314, intended to provide for a general class of textile

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fabrics known and recognized as pile fabrics composed wholly or in chief value of silk, and did not intend to embrace or include within the provisions of that paragraph articles made from such pile fabrics, such as the jewelry cases and pads involved in this case. The language of the statute is definite and free from ambiguity, and is not susceptible of any other inference or intention on the part of Congress. Had Congress intended to include within the provisions of paragraph 314 articles made from silk velvet, plush, or other pile fabrics, we think they would have expressed such intention in language that was definite and comprehensive, as they have done in paragraphs 309, 280, and 257 of said act, which provide for plushes, velvets, and other pile fabrics made of hair of the Angora goat or composed of flax, hemp, ramie, or cotton, *including articles made wholly or in chief value of such plushes*, etc. (Italics are ours.)

We accordingly hold that the articles in question are properly dutiable as manufactures of silk at the rate of 45 per cent ad valorem under paragraph 318 of said act.

The protest is sustained.

(T. D. 39171—G. A. 8546.)

Thoma-Metz hæmacytometers: Glass blood-counting chambers—Mountings for microscopes—Micro-photographic cameras—Photographic cameras.

Thoma-Metz hæmacytometers, being glass blood-counting chambers, which in use are attached to a microscope, are dutiable under the provision for microscopes and frames and mountings for the same at 25 per cent ad valorem under paragraph 94, act of 1913, rather than at 45 per cent ad valorem as articles of glass, etched, not specially provided for, under paragraph 94.

Micro-photographic cameras, used to take micro-photographs as well as film size or large photographs, the photographs taken being larger than the objects photographed, having a microscopic lens, are dutiable as photographic cameras, not specially provided for, at 15 per cent ad valorem under paragraph 380, rather than under paragraph 94, as microscopes and mountings for the same, at 25 per cent ad valorem.

The word "mountings" when used in connection with microscopes is used in the sense of accessories, adjuncts, or parts thereof.

Citing and following Schaar & Co.'s case, G. A. 8431 (T. D. 38714); United States *v.* International Forwarding Co. (9 Ct. Cust. Appls. 156, T. D. 37995); A. Traeger's case, Abstract 40680 (32 Treas. Dec. 768); American Express Co.'s case, Abstract 39771 (30 Treas. Dec. 836).

United States General Appraisers, New York, June 14, 1922.

In the matter of protest 941180 of Hensel, Bruckmann & Lorbacher against the assessment of duty by the collector of customs at the port of New York.

[Reversed.]

Walden & Webster (*Henry J. Webster* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Harry M. Farrell* and *Bernard Hahn*, special attorneys), for the United States.

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Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Sullivan, General Appraiser: The merchandise under consideration consists of two articles, one known as a Thoma-Metz hæmacytometer used to count the red and white corpuscles of the blood, and when in use attached to a microscope.

This instrument was returned as articles of glass etched, at 45 per cent ad valorem under paragraph 84 of the tariff act of 1913, and is claimed to be dutiable as microscopes and mountings for the same, at 25 per cent ad valorem under paragraph 94.

The second article consists of a photographic camera with microscopic lens and attachments thereto.

This article was returned for duty under paragraph 94 as microscopes and mountings for the same, at 25 per cent ad valorem. The claim in the protest is that it should be classified as photographic cameras at 15 per cent ad valorem under paragraph 380.

The applicable portions of the competing paragraphs are as follows:

84. Glass bottles, * * * and all articles of every description composed wholly or in chief value of glass, * * * etched, * * * or printed in any manner, * * * not specially provided for in this section, * * * 45 per centum ad valorem:

94. Surveying instruments, telescopes, microscopes, photographic and projection lenses, and frames and mountings for the same, 25 per centum ad valorem.

380. Photographic cameras, and parts thereof, not specially provided for in this section, photographic dry plates, not specially provided for in this section, 15 per centum ad valorem: * * *

Counsel for the protestants at the trial stated the issue as follows:

We have two different articles in this protest, one is a Thoma-Metz photometer, which is to be used attached to a microscope, and is an accessory for a microscope, and has been assessed as articles of engraved or colored glass, and claimed to be microscopes and parts thereof, under paragraph 94. The other is a photographic camera with a microscopic lens and attachments, by which direct pictures are taken through a microscope to get a picture of the enlargements. That was assessed as a microscope, and is claimed as cameras.

The single witness testifying on the part of the protestants pointed out the Thoma-Metz photometer on the invoice, and stated it came directly after order number A/104. It is described in German on the invoice as "Blutkörper-Zähl-Apparate nach Metz," and is the item returned in red ink, at 45 per cent. A sample of the item in question was introduced in evidence, and was marked "Ex. 1." It consists of a leather-covered velvet-lined box containing an apparatus composed of glass and rubber tubing, glass plates or mountings for holding microscope specimens, and a species of telescope or magnifying glass composed of metal and vulcanized rubber with two glass lenses. Etched or printed on the glass parts (with the exception of the two lenses) are certain numerals, circles, and lines, together with the name of the manufacturer and the place of manufacture,

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Metz. In the middle of the telescope or magnifying glass is what appears to be a species of lens, which is etched with two lines crossing in the center of the lens, a large outer circle, and a small inner circle in the center of the lens.

The witness testified that this article "is for making a count of the blood; that is, to give the variations or differential of white and red blood corpuscles. * * * The lens part of that instrument is used in conjunction with another lens, or, as we call it, an objective of a microscope. The red corpuscles are placed on the glass disk and covered with a cover glass. The two pipettes in the case are for diluting the red or white corpuscles with the chemical dilution; that is, just to keep its color and show a difference. Now, the method of procedure is simply dropping a piece of—a little blood on the small disk, cover it with a cover glass, placing the slide under the microscope, and viewing it through the eyepiece, which has specially ruled sheets on them to count."

The witness further testified that this instrument does not take a photograph of the blood showing the corpuscles; that to take a photograph it is necessary to attach a camera. He testified "it just shows the blood corpuscles magnified" and it is not possible to use this article without attaching it to a microscope.

Q. What this really does is to mount the object you want to look at, the blood, so that it can be examined under the microscope, and the corpuscles counted; is that what it does?—A. Yes, sir.

Q. That is all it does?—A. That is all it does.

Q. Is the lens that is in this a magnifying lens?—A. A magnifying lens.

Q. Why can not it be used by itself then?—A. Because it has a special ruling in it, a special disk applied in there.

* * * * * * *

Q. These lines on the diagram that are ruled on them can be seen by looking through this barrel?—A. That diagram, that was not ruled on the plate; it is ruled right on the eye piece. The plate has nothing on it but two circles, merely giving the exact position for centering, and that don't necessarily have to be used. It is more or less an aid to the eye.

* * * * * * *

Q. What is the name the article is generally known by?—A. Thoma-Metz hæmacytometer.

As to the items assessed at 25 per cent, described by counsel as "Micro-photographic cameras," the witness testified the case numbers containing them are 30442 down to 30448. The witness testified this instrument was too large to be shown, but produced a pamphlet containing a photograph of the instrument and descriptive literature. This was received in evidence, and marked "Illustrative Exhibit A," etc. The witness testified as to this instrument:

A. The instrument is largely used in commercial factories as well as universities, and the chief use of the instrument is to take photographs of various metals and minerals, or any solid matter that is required to take micro-photographs as well as film size or large photographs. It is used in the factories, as a rule, to keep records of the

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various degrees of the metal, and various degrees in case of suit, and so on. In the schools it is used as an instructive instrument, and chiefly for photographic purposes. Now it consists of a camera and illuminating apparatus, also an arrangement for tipping the micro-objectives so that photographs can be made.

Q. Does it have a bellows like an ordinary camera, by which the focus can be changed?—A. Yes, sir.

Q. Or by which the size of the picture can be changed?—A. Yes, sir.

Q. And does it take the picture on a sensitized photographic plate?—A. It does.

Q. Or film?—A. Yes, sir.

Q. And the lens or lenses in it are microscopic lenses, are they?—A. Yes, sir; that is true.

Q. And the picture taken is many times larger than the object?—A. Yes, sir.

Q. Could that camera be used without those other parts?—A. No, sir; there would be no use for the camera unless for ordinary purposes, which would be entirely beyond its line.

Q. There is not any lens in the camera except a microscopic lens; is that correct?—A. That is correct.

The witness testified on cross-examination that the purpose of the camera was to examine by microscopic methods a certain object and to make a permanent microscopic view of it by taking a photograph. He admitted that with the ordinary camera an object is photographed just as seen by the eye, while the instrument in question is to put forth a microscopic view of the object, which he testified "can also be seen by the eye."

Q. In the use of this instrument you obtain a picture that is larger than the object, do you not?—A. We do.

Q. In an ordinary camera you obtain a picture that is smaller than the object?—A. That is true.

It is evident that Exhibit 1, being used in conjunction with a microscope, is an adjunct or accessory thereto, and that the article shown on Illustrative Exhibit A is a species of photographic camera.

In Schaar & Co.'s case, G. A. 8431 (T. D. 38714; 39 Treas. Dec. 304), we held that certain microscope slides and cover glasses, being *adjuncts or accessories to microscopes*, were dutiable as mountings for microscopes rather than as manufactures of glass. In that case we cited the decision of the Court of Customs Appeals in United States *v.* International Forwarding Co. (9 Ct. Cust. Appls. 156; T. D. 37995) and the definitions of "mounting" contained therein. We gather from those definitions that "the glass slip, with accessories used to preserve objects in suitable form for study with the microscope," is a mounting. (In this connection it will be observed that several of these "glass slips" and an accessory for preserving blood "in suitable form for study with the microscope" are included as part of the instrument represented by Exhibit 1.) The court concluded its decision by saying:

From the foregoing it would appear that the word "mountings," when used in connection with optical instruments such as the *microscope* and polariscope, is used in the sense of *accessories*, *adjuncts*, or parts thereof, * * *. (The italics are ours.)

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We have previously passed on similar items to the cameras in question represented by Ill. Ex. A and held them dutiable as photographic cameras at 15 per cent ad valorem under paragraph 380 in A. Traeger's case, Abstract 40680 (32 Treas. Dec. 768). In that case the camera in question was sometimes used with the microscope to photograph a microscopic image of steel bars or any other metal specimen to detect the composition of the metal. It will be observed that this is one of the uses of the camera in the case at bar (see minutes, p. 7). It is true that in the Traeger case the microscope and camera were separable, and that the camera could be used as an ordinary photographic camera, whereas in the case at bar the microscope attachment is incorporated with the camera; but we do not think that difference sufficient to remove the cameras in question from the classification as "Photographic cameras, and parts thereof, not specially provided for in this section" specified in paragraph 380.

See also our decision in American Express Co.'s case, Abstract 39771 (30 Treas. Dec. 836), on enlarging cameras used to enlarge photographs, which would seem to be a similar use to that of the merchandise in question, wherein we held the same dutiable under the eo nomine provision for photographic cameras in paragraph 380.

Counsel for the Government cites various cases with reference to manufactures of glass under previous tariff acts beginning with 1883. An examination of these authorities in our judgment shows that they are not applicable to the present statute, which clearly defines what are and what are not a manufacture of glass, microscopes and mountings for the same, and photographic cameras.

We are of opinion, therefore, that the collector was in error in his classification of these two instruments, and hold the Thoma-Metz hæmacytometers dutiable as "mountings for microscopes" at 25 per cent ad valorem under paragraph 94, and the micro-photographic cameras dutiable as photographic cameras at 15 per cent ad valorem under paragraph 380.

The protest is sustained.

(T. D. 39172—G. A. 8547.)

Tea cozies.

TEA DOLLS—TOYS—MANUFACTURES OF SILK.

So-called tea cozies, consisting of a diminutive bust and arms of a lady, the bust being about 5 inches in height and attached to a wire base tapering from about 3 inches at the waist line of the figure to an elliptical hollow base, the major axis of which measures about 15 inches and the minor axis measures about 9 inches, the figure, including the base, being dressed in an evening costume made of silk, are not suitable or adapted for use as a doll or plaything for children, but rather as an article of utility or adornment. As they are composed in chief value of silk, they are properly dutiable as manufactures of silk under paragraph 318, tariff act of 1913.

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United States General Appraisers, New York, June 14, 1922.

In the matter of protest 942515 of Bernard, Judae & Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Barnes, Chilvers & Halstead (*Frank P. Wilson* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Samuel Isenschmid* and *Samuel M. Richardson*, special attorneys), for the United States.

Before Board 2 (FISCHER, HOWELL, and WELLER, General Appraisers).

HOWELL, General Appraiser: This protest is lodged against the assessment of duty at 45 per cent ad valorem under paragraph 318, tariff act of 1913, on certain merchandise described in the invoice as "Tee puppen," and reported by the appraiser to consist of "tea cozy tops, in the form of figures of women, composed of silk, with decorated earthenware or china heads, the silk forming the component material of chief value." The importers claim, among other things, that the merchandise is properly dutiable as dolls at the rate of 35 per cent ad valorem under paragraph 342 of said act.

The Assistant Attorney General contends that the merchandise is not adapted for use as a plaything for children, and is therefore not a doll or toy, but rather an article of utility and adornment, in that its intended and practical use is as an ornamental covering for a teapot and to satisfy an esthetic taste for beauty and adornment at the tea table or otherwise.

The sample admitted in evidence consists of a diminutive bust and arms of a lady. The bust is about 5 inches in height and is attached to a wire base tapering from about 3 inches at the waist line of the figure to an elliptical hollow base, the major axis of which measures about 15 inches and the minor axis measures about 9 inches. The figure, including the base, is dressed in an evening costume made of silk, and the base is padded to give it symmetrical form, and is lined with cotton.

Counsel for the importers state in their brief filed herein that the articles in question "are bought as dolls—invoiced as dolls—sold as dolls." We are unable to find any evidence in the case to support the statement of counsel that the articles are bought and sold as dolls; and the fact that the articles are invoiced as "Tee puppen" (the German for tea dolls) is not controlling, and will not prevent a different classification when such classification is otherwise proper. In re Crowley (55 Fed. 283).

The only testimony in the case is that of Miss Sommers, who testified that she is connected with the Sommers Trading Co., the importers herein. Her testimony in relation to the manner in which the articles in question are bought and sold is in part as follows:

Q. Look at the invoice in line No. 6, described as tee puppen in German, with which I am not quite familiar, and state if that is fairly represented by the sample introduced.

* * * * * * *

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Q. It is line No. 6; is that item No. 6?—A. Yes.

Q. Read that, what it says.—A. It says, tea doll, from the collection; out of the collection.

Q. Is that fairly represented by this sample?—A. It is.

Q. You are employed by your father in the Sommers Trading Co. as a saleslady?—A. Yes, sir.

Q. And you do actually sell these articles?—A. Yes, sir.

Q. In what name do you sell them?—A. The dolls?

Q. Yes.—A. Well, those, we could not sell them yet.

Q. You have not sold them?—A. No; we have not sold them.

Q. Have you sold any similar to this, or prior importations that came in before?—A. Oh, yes; but not dressed like this.

Q. Under what name do you sell such articles; what do you call them when you sell them.—A. Tea dolls.

Q. What do the people who come in and ask for them say when they are looking for these articles?—A. They do not look at them.

* * * * * * *

Q. You have sold them, you have testified?—A. Yes, sir.

Q. When they came in and wanted to buy this article, what did they ask for; how do they describe what they want to buy?—A. Well, we only sell the lamp shades; they are not these numbers; they are not tea dolls.

Q. I am not speaking about lamp shades.—A. They do not even look at these; they do not demand these numbers.

Q. Oh, I see; they see the article and then want to buy it?—A. No; they do not even look at it. We can not sell them.

Q. You have not been able to sell them yet?—A. No; nothing.

Q. Have not you sold your prior importations, this same thing?—A. But not the dressed ones.

Q. You have sold them undressed?—A. Yes; only the heads.

This testimony not only fails to support the claim of counsel for the importers that the articles in controversy are bought and sold as dolls, but also fails to show how the articles are in fact bought and sold. In the absence of proof that the articles in question are known commercially as dolls, resort must be had to the common or ordinary definition of that term.

The lexicographical definitions of a doll are as follows:

A child's puppet; a toy baby for a little girl.—Webster's Dictionary.

A toy puppet representing a person, and used as a plaything by children, especially by girls.—New Standard Dictionary.

A puppet representing a child, usually a little girl (but also sometimes a boy or a man, as a soldier, etc.), used as a toy by children, especially by girls.—Century Dictionary and Cyclopedia.

These definitions refer to a doll as being a toy or a plaything for children. In defining what constitutes a toy, Judge Smith, speaking for the Court of Customs Appeals in Illfelder *v.* United States (1 Ct. Cust. Appls. 109; T. D. 31115), said:

In common speech, and as popularly understood, a toy is essentially a plaything, something which is intended and designed for the amusement of children only, and which by its very nature and character is *reasonably* fitted for no other purpose. Although an article may be chiefly used for the amusement of children, if its nature

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and character are such that it is also reasonably fitted for the amusement of adults, or if it is reasonably capable of use for some practical purpose other than the amusement of children, it can not be classed as a toy unless it is affirmatively shown by the importer that it is so known and designated by the trade generally.

From these definitions and the interpretation of the court as to what constitutes a toy it requires no extensive elaboration or stretch of the imagination for one to conclude that the articles in controversy are not dolls, as claimed by the importers. They may be tea dolls as indicated on the invoice, but they are not dolls such as are used as playthings for children. They are articles of utility and adornment and, as the Assistant Attorney General states in his brief, are suitably adapted for use as a "decoration on a tea table to be placed over a teapot for the purpose of keeping the same warm and at the same time adding beauty and distinction to the table."

The record shows that the articles are composed in chief value of silk. We therefore hold that they are properly dutiable as manufactures in chief value of silk at 45 per cent ad valorem under paragraph 318 of said act, as assessed.

The protest is accordingly overruled, and the decision of the collector is affirmed.

(T. D. 39173.)

Common carrier.

Approval of common carrier's bond of the Chicago & Eastern Illinois Railway Co., dated March 15, 1922, and substituted for the common carrier's bond filed by William J. Jackson, receiver, dated March 18, 1920.

TREASURY DEPARTMENT, *June 15, 1922.*

SIR: The common carrier's bond of the Chicago & Eastern Illinois Railway Co., dated May 15, 1922, transmitted with your letter of the 1st instant, and approved by the department June 12, 1922, is returned herewith.

In view of the receipt of a copy of the order of the District Court of the United States for the northern district of Illinois, eastern division, dated December 9, 1921, for the conveyance to the "Purchasing Committee" of all the property of the Chicago & Eastern Illinois Railroad Co., the company's request for the substitution of this new bond for the bond filed by William J. Jackson, receiver, dated March 18, 1920, and approved by the department May 26, 1920, is hereby granted.

The superseded bond should be marked "discontinued" and retained on file in your office to meet any liability that may have accrued thereon.

Respectfully, ELMER DOVER,
Assistant Secretary.

(19023.)

COLLECTOR OF CUSTOMS, *Chicago, Ill.*

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(T. D. 39174.)

Amendment of regulations.

Article VIII, T. D. 38742 of June 14, 1921, amended.

TREASURY DEPARTMENT, *June 20, 1922.*

To Collectors of Customs and Others Concerned:

The naval officer at New York has invited the department's attention to section 403 of the emergency tariff act and Article VIII of T. D. 38742, relative to the reduction of foreign currency to United States currency.

The case in question involved the reduction of Swiss francs to United States currency, which if reduced on the basis of the proclaimed value would result in a depreciation less than 5 per cent, but if the buying rate in New York were used as the basis, the depreciation would be greater than 5 per cent.

As section 403 of the emergency tariff act makes the buying rate the basis for the reduction of foreign currency to United States currency, the instructions contained in the regulations, Article VIII, T. D. 38742, are in error in that the proclaimed value is used as the basis.

The first paragraph of said article is accordingly amended to read as follows:

Conversion of currency.—In converting foreign currencies into United States currency, the values proclaimed quarterly by the Secretary of the Treasury will be taken, but if no such value has been proclaimed or if the value so proclaimed varies by 5 per cent or more from a value measured by the buying rate in the New York market at noon on the day of exportation, conversion shall be made at a value measured by such buying rate.

The Federal reserve bank rates of exchange published in the Treasury Decisions are the buying rates referred to.

(106972.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39175.)

Cellophane in sheets or strips.

Appeal directed from various decisions of the Board of United States General Appraisers holding cellophane in sheets or strips to be dutiable at the rate of 15 per cent ad valorem under paragraph 385, tariff act of 1913.

TREASURY DEPARTMENT, *June 21, 1922.*

SIR: The department is in receipt of your letter of the 16th instant, inviting attention to certain decisions of the Board of United States General Appraisers as follows: April 24, 1922, protest 935727;

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April 24, 1922, protest 943032; April 24, 1922, protest 939433; May 2, 1922, protest 941079; also Abstract 44918, dated April 24, 1922, and Abstract 44947, dated May 2, 1922, wherein the board held certain cellophane in sheets or strips classified as dutiable at 35 per cent ad valorem under paragraph 319 of the tariff act of October 3, 1913, to be dutiable at the rate of 15 per cent ad valorem as nonenumerated manufactured articles under paragraph 385 of the said act.

In accordance with your recommendation, you are hereby requested to file in the name of the Secretary of the Treasury an application with the United States Court of Customs Appeals for a review of the said decisions in conformity with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ELMER DOVER,
(91918) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 39176.)

Seeds strung—Nonenumerated manufactured articles.

Appeal directed from decision of the Board of United States General Appraisers T. D. 39092, April 25, 1922, wherein the board held certain strung seeds to be dutiable at the rate of 15 per cent ad valorem as nonenumerated manufactured articles under paragraph 385, tariff act of 1913.

TREASURY DEPARTMENT, *June 21, 1922.*

SIR: The department is in receipt of your letter of the 19th instant, inviting attention to a decision of the Board of United States General Appraisers, dated April 25, 1922 (T. D. 39092, G. A. 8522), wherein the board held that certain strung seeds classified as dutiable at the rate of 50 per cent ad valorem under paragraph 333 of the tariff act of October 3, 1913, as articles in chief value of beads were dutiable at the rate of 15 per cent ad valorem as nonenumerated manufactured articles under paragraph 385 of the said act.

In accordance with your recommendation, you are hereby requested to file in the name of the Secretary of the Treasury an application with the United States Court of Customs Appeals for a review of the said decision in conformity with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ELMER DOVER,
(92993.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

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(T. D. 39177.)

Antidumping act, 1921—Finding by the Secretary of the Treasury.

The Secretary of the Treasury makes finding under section 201 (*a*), antidumping act, 1921, of dumping in the case of canned red raspberries, imported from the Province of Ontario, Canada.

TREASURY DEPARTMENT, *June 19, 1922.*

To Collectors of Customs and Others Concerned:

Section 201 (*a*) of the antidumping act, 1921, provides as follows:

SEC. 201. (*a*) That whenever the Secretary of the Treasury (hereinafter in this act called the "Secretary"), after such investigation as he deems necessary, finds that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation into the United States of a class or kind of foreign merchandise, and that merchandise of such class or kind is being sold or is likely to be sold in the United States or elsewhere at less than its fair value, then he shall make such finding public to the extent he deems necessary, together with a description of the class or kind of merchandise to which it applies in such detail as may be necessary for the guidance of the appraising officers.

After due investigation I find that the industry of canning red raspberries in the United States is being or is likely to be injured, by reason of the importation into the United States of canned red raspberries, imported from the Province of Ontario, Canada, and that such merchandise is sold or is likely to be sold in the United States at less than its fair value.

(106085.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39178.)

Foreign currencies—Rates of exchange.

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), emergency tariff act of May 27, 1921.

TREASURY DEPARTMENT, *June 26, 1922.*

To Collectors of Customs and Others Concerned:

The appended table of the values of certain foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (*c*), act of May 27, 1921, during the period from June 16 to June 22, 1922, both inclusive, is published for the information of collectors of customs and others concerned.

(103512.) ELMER DOVER, *Assistant Secretary.*

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Values of foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 403 (c), emergency tariff act of May 27, 1921.

PERIOD JUNE 16 TO 22, 1922, INCLUSIVE.

Country.	Name of currency.	June 16.	June 17.	June 19.	June 20.	June 21.	June 22.
Europe:							
Austria	Krone	$0.000056	$0.00006	$0.000069	$0.000068	$0.000069	$0.00007
Belgium	Franc	.0825	.0824	.0815	.0822	.0818	.0813
Bulgaria	Lev	.00745	.0072	.007133	.007267	.007275	.007408
Czechoslovakia	Krone	.019186	.019197	.019128	.019133	.019131	.019133
Denmark	do	.2162	.2153	.2130	.2123	.2147	.2140
England	Pound sterling	4.4679	4.4371	4.3961	4.4236	4.4279	4.4215
Finland	Markka	.021519	.021438	.021438	.021356	.021413	.021513
France	Franc	.0877	.0867	.0851	.0865	.0864	.0857
Germany	Reichsmark	.003159	.003060	.003022	.003144	.003041	.003034
Greece	Drachma	.0402	.0402	.0382	.0385	.0390	.0380
Holland	Guilder	.3890	.3862	.3843	.3834	.3858	.3855
Hungary	Krone	.001006	.001006	.001013	.001042	.001053	.00101
Italy	Lira	.0501	.0494	.0482	.0489	.0486	.0482
Norway	Krone	.1712	.1710	.1677	.1652	.1667	.1668
Poland	Mark	.000235	.000237	.000226	.000228	.000228	.000228
Portugal	Escudo	.0757	.0754	.0745	.0746	.0745	.0738
Rumania	Leu	.006603	.0066	.006513	.006494	.006478	.006503
Serbia	Dinar	.013958	.013886	.013757	.013714	.0135	.013357
Spain	Peseta	.1574	.1566	.1552	.1555	.1560	.1558
Sweden	Krona	.2589	.2577	.2553	.2552	.2569	.2566
Switzerland	Franc	.1905	.1899	.1891	.1894	.1898	.1897
Yugoslavia	Krone	.003489	.003475	.003428	.003426	.003389	.003339
Asia:							
China	Chefoo tael	.8333	.8250	.8129	.8171	.8158	.8150
Do	Hankow tael	.8300	.8183	.8096	.8104	.8100	.8100
Do	Shanghai tael	.7970	.7929	.7865	.7832	.7839	.7825
Do	Tientsin tael	.8358	.8217	.8163	.8146	.8183	.8183
Do	Hongkong dollar	.5780	.5782	.5738	.5734	.5741	.5755
Do	Mexican dollar	.5748	.5730	.5685	.5708	.5710	.5685
Do	Tientsin or Peiyang dollar.	.5904	.5775	.5850	.5775	.5779	.5775
Do	Yuan dollar	.5775	.5733	.5725	.5700	.5688	.5725
India	Rupee	.2898	.2897	.2874	.2865	.2864	.2865
Japan	Yen	.4773	.4777	.4770	.4787	.4783	.4787
Singapore (S.S.)	Dollar	.5138	.5125	.5133	.5121	.5108	.5125
North America:							
Canada	do	.991347	.991014	.990625	.990347	.989910	.989797
Cuba	Peso	.998125	.99825	.997969	.998188	.998063	.998188
Mexico	do	.484458	.484844	.4845	.485875	.4860	.485781
Newfoundland	Dollar	.988906	.98875	.988438	.988203	.987578	.987422
South America:							
Argentina	Peso (gold)	.8179	.8163	.8078	.8034	.8113	.8095
Brazil	Milreis	.1373	.1373	.1366	.1356	.1356	.1364
Uruguay	Peso	.8145	.8104	.8052	.8037	.8028	.7988

(T. D. 39179—G. A. 8548.)

Strips of ivory for piano keys—Manufactures of ivory.

1. Strips of ivory about 4 inches long, five-eighths of an inch wide, and less than one-sixteenth of an inch thick, chiefly used in the manufacture of piano keys, are not dutiable as "ivory tusks in their natural state, or cut vertically across the grain only, with the bark left intact," under paragraph 369, act of 1913, nor as "articles manufactured, in whole or in part, not provided for" under paragraph 385. They are properly dutiable as manufactures of ivory not specially provided for at 35 per cent ad valorem under paragraph 369.

2. A manufacture may be material for another manufacture. (Citing and following United States *v.* Richter, 2 Ct. Cust. Appls. 167, T. D. 31680; Lyon & Healy's case, Abstract 30931, 23 Treas. Dec. 637; United States *v.* Lyon & Healy, 4 Ct. Cust. Appls. 438, T. D. 33873; and Robertson *v.* Gerdan, 132 U. S. 454.)

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United States General Appraisers, New York, June 16, 1922.

In the matter of protest 947097 of Atlas Shipping Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Strauss & Hedges (*Jacob L. Klingaman* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Harry M. Farrell*, special attorney), for the United States.

Before Board 1 (McClelland, Sullivan, and Brown, General Appraisers).

Sullivan, General Appraiser: The official samples of the merchandise in question (Exhibit 1) consist of strips of ivory about 4 inches long, five-eighths of an inch wide, and less than one-sixteenth of an inch thick. They were assessed with duty at 35 per cent ad valorem under paragraph 369, act of 1913, as manufactures of ivory not specially provided for.

The protest claims the merchandise dutiable at 20 per cent ad valorem under the first part of paragraph 369, which provides for "Ivory tusks in their natural state, or cut vertically across the grain only, with the bark left intact," or under paragraph 385 at 15 per cent ad valorem, being the provision for unenumerated manufactured articles.

The merchandise is specifically intended for the making of piano keys, and the method pursued is as follows: The merchandise is "glued on wood to make piano keys." "They form the back part or tail of the key." An illustrative exhibit was introduced in evidence, and marked "Ill. Ex. A," which it was testified formed the front part of the key. The testimony then continues as follows:

Q. Now, tell us the various processes that you subject the importation, Exhibit 1, to before it becomes a key.—A. It is dry-kilned five days, then it is tooth-planed on one side. It is then matched for color and matched for grain. It is then milled to width and milled to length. It is then jointed. It is then glued on the wood and allowed to dry for about 10 days. It is then planed and scraped and sand-papered, and the edges and corners rounded and polished.

The witness testified further that he has sold ivory in this particular form for inlaid work, but its use for such purpose was very small as compared with its use for piano keys.

On cross-examination he testified that in making this merchandise the tusk in its natural state "is cut into sections, and then these pieces are cut from them," and then "they are bleached."

He further testified the so-called "tooth-planing" consists in "simply making small ridges on one side of the ivory, in order that it will hold securely to the wood after it is glued." He admitted, in response to a question by General Appraiser McClelland, that these strips of ivory represented by Exhibit 1 have been prepared for the deliberate purpose of fitting them for piano keys; that they are not changed in shape or form except to bring them all to the same size.

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It is evident from the testimony, and an examination of the samples, these articles are not "ivory tusks in their natural state, or cut vertically across the grain only, with the bark left intact." We therefore leave the claim for 20 per cent ad valorem under the first part of paragraph 369 out of the question.

The other claim is that they are "articles manufactured, in whole or in part, not provided for" under paragraph 385. If they are manufactures, as claimed by the importer, they are not dutiable under this paragraph for the reason they are made of ivory, and manufactures of ivory, not specially provided for, are covered by paragraph 369.

Is this a manufacture of ivory, and was the collector correct in his classification?

In United States *v.* Richter (2 Ct. Cust. Appls. 167; T. D. 31680) it was held that a manufacture may be material for another manufacture. In that case certain dressed pieces of sheepskin sewed together in China in the form of rugs for convenient shipment and to give the rugs a definite size, known to the trade as rugs, and after arrival in this country taken apart, the poor pieces cut out and the good pieces rematched and formed anew into rugs, carriage robes, overcoats, and other things of that nature, were held dutiable as manufactures of furs, and not as furs dressed on the skin, nor as nonenumerated articles manufactured in whole or in part.

The court said at page 169:

> Ordinarily a manufactured article takes a different form, or at least subserves a purpose different from the original materials out of which it is made, and usually it takes a different name.—Tidewater Oil Co. *v.* United States (171 U. S. 210, 216). That does not mean, however, that its usefulness as a material has necessarily ended and that as a manufacture it can not serve the purpose of material for some other manufacture. Iron ore is converted into iron; iron is turned into steel; and steel into thousands of articles of industrial usefulness. The iron is a manufacture of the ore, the steel a manufacture of the iron, and a watch spring a manufacture of the steel. "The finished product of one manufacture thus becomes the material of the next in rank."

In Lyon & Healy's case, Abstract 30931 (23 Treas. Dec. 637), among other things the board held certain round pieces of ivory in different lengths having a hole bored lengthwise through the center, intended to be made into mouthpieces for piccolos and flutes, which before being attached to the flutes or piccolos had to be polished and cut to form suitable for use, dutiable as manufactures of ivory and not parts of musical instruments. As to this portion of the decision the board was affirmed by the Court of Customs Appeals in United States *v.* Lyon & Healy (4 Ct. Cust. Appls. 438; T. D. 33873).

However, merchandise identical with that in the case at bar, or at least very similar, was passed on by the Supreme Court of the United States in Robertson *v.* Gerdan (132 U. S. 454). That case

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related to certain pieces of ivory for the keys of pianos and organs, matched to certain octaves, sold to manufacturers, who scraped them to make them adhere to wood, and then glued them to wood. They were assessed with duty as manufactures of ivory, under schedule M of section 2504 of the Revised Statutes of 1874, 2d ed. p. 474, and under schedule N of section 2502 of the Revised Statutes as enacted by the act of March 3, 1883 (22 Stat. 511). The importer claimed they were liable to a lower duty as musical instruments, under schedule M of section 2504 of the Revised Statutes of 1874, 2d ed. p. 478, and under schedule N of section 2502 of the Revised Statutes as enacted by said act of March 3, 1883 (22 Stat. 513). In a suit brought against the collector to recover the alleged excess of duty paid, the court below charged the jury that if the articles were made on purpose to be used in pianos and organs, and were used exclusively in them, they were dutiable as musical instruments and not as manufactures of ivory. The Supreme Court held that this was error, and that the articles as imported were manufactures of ivory.

We therefore hold that the collector was correct in his classification of this merchandise as manufactures of ivory not specially provided for, and his assessment of duty thereon as such at 35 per cent ad valorem under paragraph 369.

The protest is overruled.

(T. D. 39180—G. A. 8549.)

Legality of reappraisement.

AUTHORITY TO REVIEW REAPPRAISEMENT BOARD'S DECISION.

Upon a protest filed against the liquidation of an entry based upon a value found by a reappraisement board, upon the ground that the action of the reappraisement board was void, neither this board nor a court has power to set aside the finality given by statute to the decisions of the reappraisement board, except where such board proceeded contrary to law or rendered a decision arbitrarily.

United States General Appraisers, New York, June 20, 1922.

In the matter of protest 939222 of L. & E. Stirn against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

John Giblon Duffy for the importer.

William W. Hoppin, Assistant Attorney General (*John J. Mulvaney* and *John A. Kemp*, special attorneys), for the United States.

Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers).

HAY, General Appraiser: This is a protest against the liquidation of an entry and the assessment of duty upon certain silk yarn im-

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ported from France, duty having been assessed upon the value determined by a board of United States General Appraisers and found by it to be the dutiable value of the merchandise. The protestant contends that the action of the reappraisement board was invalid and void for the reason that it proceeded upon a wrong principle.

Neither this board, sitting as a classification board, nor the Court of Customs Appeals, nor any other court, can by any stretch of judicial authority be legally constituted a reappraisement tribunal. Congress has done all that can be done by statute expressed in definite words to make the reappraisement of imported merchandise by a board of United States General Appraisers final and conclusive, and nothing can lawfully rob such reappraisement of its finality except that which necessarily vitiates the act of every public official or tribunal—that is, fraud, arbitrary action, or proceeding contrary to law. While this is a well-settled and definite principle of law from which the courts have not in express terms ever departed, there are to be found decisions wherein the courts without expressly departing from the principle have proceeded to so consider the case that was before the reappraisement tribunal as to at least in dicta amount to a reappraisement of the merchandise.

In the case at bar it is undisputed that there is no actual market value as defined by law for the merchandise in question in the condition in which it was imported, and that the duty based in whole or in part upon such value can not be ascertained. The reappraising tribunal, as did the local appraiser in the first instance, adopted that provision of paragraph L of section 3 of the act of 1913 which authorizes the ascertainment of the dutiable value by determining the cost of production in a manner expressly laid down in that paragraph in these words:

> * * * such cost of production to include the cost of materials and of fabrication, and all general expenses to be estimated at not less than 10 per centum, covering each and every outlay of whatsoever nature incident to such production, together with the expense of preparing and putting up such merchandise ready for shipment, and an addition of not less than 8 nor more than 50 per centum upon the total cost as thus ascertained. * * *

There seems to be no question but that the reappraisement board was authorized to adopt that provision. The sole question is, did it correctly apply that paragraph? In considering that question we think we are bound, as every court must be bound, by the well-established rule that the finality which Congress has given to the decision of a board of three general appraisers in a reappraisement proceeding does not permit us to inquire as to the weight of evidence upon which it based its finding in the application of that statute, nor the credence which it gave to the testimony of witnesses or any documentary evidence which was offered, but only to inquire whether there was any evidence upon which it based its finding or whether

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such finding was in conflict with all the evidence in the case, and hence arbitrary. The reappraisement board wrote an opinion stating the reasons for its decision, and evidently from that opinion it disbelieved or at least disregarded, for reasons which it assigns, the testimony of one of the witnesses called by the protestant. The reappraisement board was, in our judgment, clearly within its right in determining the weight to be given to the testimony of that witness as well as what weight should be given to all the testimony in the case, and we have no authority to review its decision.

A case very similar to the one now at bar, if not in fact identical with it, was decided by this board in L. & E. Stirn's case, G. A. 8218 (T. D. 37861), and later affirmed by the Court of Customs Appeals in Stirn *v.* United States (10 Ct. Cust. Appls. 17; T. D. 38257). The reappraisement board in the decision of the case at bar evidently examined with care the decision of Stirn *v.* United States in the Court of Customs Appeals, supra, and, as practically stated in its opinion, sought to and believed it was following that decision. The very skillful attorney in the case at bar in an able brief expresses the view that the reappraisement board did not understand the decision of the Court of Customs Appeals and that it did not follow it, and its decision is in conflict therewith. Between these two diametrically opposed views as to the meaning of the Court of Customs Appeals we would not assume to decide, but in the decision of this case would prefer to base it upon the well-settled definite principles which govern the decision of cases of this character. Our judgment is that the court did not adopt an incorrect principle in following in its decision of the case the above-quoted provision of paragraph L nor in applying it, and did not act arbitrarily; and further than this we feel that we have no authority to go, as whatever criticism may be leveled at the reappraisement board's decision goes to the weight of evidence that was before it and the credence which it gave to the testimony of witnesses, and upon these matters we think its decision was absolutely final.

The protest is therefore overruled.

(T. D. 39181.)

Artificial fruit.

Appeal directed from decision of the Board of United States General Appraisers (Abstract 44992), holding certain articles in the form of lemons, onions, pumpkins, and the like to be dutiable as manufactures of plaster of Paris at 25 per cent ad valorem under paragraph 369, tariff act of 1913.

TREASURY DEPARTMENT, *June 24, 1922.*

SIR: The department is in receipt of your letter of the 21st instant, inviting attention to a decision of the Board of United States General

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Appraisers, dated June 5, 1922 (Abstract 44992), wherein the board held that certain articles of plaster of Paris in the form of artificial lemons, onions, pumpkins, and the like, classified as dutiable at 60 per cent ad valorem under paragraph 347 of the tariff act of October 3, 1913, were dutiable at the rate of 25 per cent ad valorem as manufactures of plaster of Paris under paragraph 369 of the said act.

In accordance with your recommendation, you are requested to file in the name of the Secretary of the Treasury an application with the United States Court of Customs Appeals for a review of the said decision in conformity with the provisions of subsection 29 of section 28 of the tariff act of August 5, 1909.

Respectfully, ELMER DOVER,
(110078.) *Assistant Secretary.*

ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 39182.)

Antidumping act of 1921—Finding by the Secretary of the Treasury.

T. D. 39028 of March 4, 1922, in which was published a finding under section 201 (*a*), antidumping act, 1921, of dumping in the case of peeled tomatoes in tins from Italy, revoked.

TREASURY DEPARTMENT, *June 24, 1922.*

To Collectors of Customs and Others Concerned:

On further investigation in Italy, the department finds that the conditions upon which it based the finding of dumping published in T. D. 39028 of March 4, 1922, in the case of peeled tomatoes in tins from Italy, no longer exist.

T. D. 39028 is therefore hereby revoked.

(106085.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39183.)

Wool on lambskins.

Appeal directed from decision of the Board of United States General Appraisers (T. D. 39155), holding wool on lambskins to be free of duty under paragraph 650, tariff act of 1913.

TREASURY DEPARTMENT, *June 27, 1922.*

SIR: The department is in receipt of your letter of the 22d instant, inviting attention to a decision of the Board of United States General Appraisers dated June 5, 1922 (T. D. 39155, G. A. 8540), wherein the board held that certain wool on lambskins, classified as dutiable at 15 cents per pound under paragraph 18 of the emergency tariff act of May 27, 1921, was free of duty under paragraph 650 of the tariff act of October 3, 1913.

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In accordance with your recommendation, you are hereby requested to file in the name of the Secretary of the Treasury an application with the United States Court of Customs Appeals for a review of the said decision in conformity with the provisions of subsection 29, of section 28 of the tariff act of August 5, 1909.

Respectfully, ELMER DOVER,
(74290.) *Assistant Secretary.*
ASSISTANT ATTORNEY GENERAL, *New York.*

(T. D. 39184.)

Common carrier.

Approval and substitution of common carriers' bonds.

TREASURY DEPARTMENT, *June 28, 1922.*

To Collectors of Customs and Others Concerned:

The common carrier's bond of the Chicago & Eastern Illinois Railroad Co., dated May 15, 1922, and approved by the department June 12, 1922, has been filed in the office of the collector of customs at Chicago, Ill.

This bond is substituted for the common carrier's bond filed by the Chicago & Eastern Illinois Railroad Co., William J. Jackson, receiver, dated March 18, 1920, and approved by the department May 26, 1920 (T. D. 38432).

(19023.) ELMER DOVER, *Assistant Secretary.*

(T. D. 39185.)

Drawback.

Synopsis of drawback decisions issued between June 12 and July 1, 1922, inclusive.

(A) *Bedsteads and cribs.*—Manufactured by the Simmons Co., of Kenosha, Wis., with the use of imported mother-of-pearl ornaments.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer dated May 31, 1922, showing, in the case of each lot of bedsteads and cribs manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the number of bedsteads produced, and the number, dimensions, and identity of the imported mother-of-pearl ornaments appearing therein. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the imported mother-of-pearl ornaments appearing in the exported bedsteads or cribs, as shown by the abstract from the manufacturing record.

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Rate effective on and after January 27, 1922.

Sworn statement dated May 31, 1922, transmitted to the collector of customs at New York, N. Y., on June 16, 1922. (96512.) (Signed) ELMER DOVER, *Assistant Secretary.*

(B) *Card clothing for textile machinery.*—Manufactured by Ashworth Bros. (Inc.), of Fall River, Mass., with the use of imported card-cloth foundation.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer, dated June 2, 1922, showing, in the case of each lot of card clothing manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of the imported card-cloth foundation used, and the quantity of finished card clothing obtained. If the wastage should have any value, the record shall show the quantity of such wastage and its value. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the imported card-cloth foundation used in the manufacture of the exported card clothing, as shown by the abstract from the manufacturing record, less the quantity thereof which the value, if any, of the waste will replace.

Rate effective on and after April 19, 1922.

Sworn statement dated June 2, 1922, transmitted to the collector of customs at Boston, Mass., on June 16, 1922. (102103–3.) (Signed) ELMER DOVER, *Assistant Secretary.*

(C) *Cigarette tips.*—T. D. 36827 of November 24, 1916, providing for the payment of drawback on cigarette tips manufactured by the Boucher Cork & Machine Co., of New York, N. Y., with the use of various imported materials, extended to provide for drawback on cigarette tips when manufactured by the said firm with the use of imported metal leaf and cellulose in rolls.

Extension effective on and after April 13, 1922.

Supplemental sworn statement dated June 7, 1922, transmitted to the collector of customs at New York, N. Y., on June 27, 1922. (97871–3.) (Signed) ELMER DOVER, *Assistant Secretary.*

(D) *Cloth, jersey.*—Manufactured by the United States Knitting Co., of Central Falls, R. I., with the use of imported yarn.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer dated June 8, 1922, showing, in the case of each lot of jersey cloth manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, value, and identity of the imported yarn used, the

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quantity of finished cloth obtained, and the quantity and value of the waste incurred. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the imported yarn used in the manufacture of the exported jersey cloth, as shown by the abstract from the manufacturing record, the quantity thereof to be reduced according to the quantity of imported material which the value of the waste will replace.

Rate effective on and after April 1, 1922.

Sworn statement dated June 8, 1922, transmitted to the collector of customs at Boston, Mass., on June 27, 1922. (101409–3.) (Signed) ELMER DOVER, *Assistant Secretary.*

(E) *Extracts, flavoring.*—Manufactured by the C. F. Sauer Co., of Richmond, Va., with the use of imported vanilla beans, lemon oil or orange oil, and domestic taxpaid alcohol.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer dated June 7, 1922, showing, in the case of each lot of flavoring extract manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity, identity, and kind of imported material used, the quantity and identity of the domestic taxpaid alcohol used, and the quantity and kind of finished product obtained. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the imported material, and the tax paid on the domestic alcohol, used in the manufacture of the exported flavoring extracts, as shown by the abstract from the manufacturing record.

Rate effective on and after October 11, 1921.

Sworn statement dated June 7, 1922, transmitted to the collector of customs at Norfolk, Va., on June 27, 1922. (104569–17.) (Signed) ELMER DOVER, *Assistant Secretary.*

(F) *Flour, blended.*—T. D. 38874 (F) of October 12, 1921, providing for the payment of drawback on blended flour produced by W. P. Tanner-Gross & Co. (Inc.), of New York, N. Y., with the use of imported flour by blending with domestic flour, extended to provide for drawback on such flour when produced by the said firm for the account of the Maple Leaf Milling Co. (Ltd.), of New York, N. Y.

Extension effective on and after March 24, 1922.

Supplemental sworn statements of W. P. Tanner-Gross & Co. (Inc.), and the Maple Leaf Milling Co. (Ltd.), dated June 7 and June 9, 1922, respectively, transmitted to the collector of customs at New York, N. Y., on June 27, 1922. (100284–9.) (Signed) ELMER DOVER, *Assistant Secretary.*

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(G) *Seals, lead and cord.*—Manufactured by the Porter Safety Seal Co., of Chicago, Ill., with the use of imported hemp cord.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer, dated June 8, 1922, showing, in the case of each lot of seals manufactured for exportation with benefit of drawback, the lot number and date of manufacture thereof, the quantity and identity of the imported cord used, and the number of each kind and size of seals obtained. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the imported cord used in the manufacture of the exported seals, as shown by the abstract from the manufacturing record.

Rate effective on and after March 16, 1922.

Sworn statement dated June 8, 1922, transmitted to the collector of customs at Chicago, Ill., on June 16, 1922. (59712–1.) (Signed) ELMER DOVER, *Assistant Secretary.*

(H) *Sirup.*—Manufactured by the Dunbar Molasses & Syrup Co., of New Orleans, La., wholly or in part with the use of imported duty-paid raw sugar.

A manufacturing record shall be kept in the manner described in the sworn statement of the manufacturer, dated April 19, 1922, showing, in the case of each lot of sirup manufactured for exportation with benefit of drawback, and lot number and date of manufacture thereof, the quantity and identity of the imported duty-paid sugar used, the quantity of other ingredients used, if any, and the quantity of finished sirup obtained. A sworn abstract from such manufacturing record shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per cent thereof, on the imported sugar used in the manufacture of the exported sirup as shown by the abstract from the manufacturing record.

Rate effective on and after June 17, 1921.

Sworn statement dated April 19, 1922, transmitted to the collector of customs at New Orleans, La., on June 16, 1922. (62354.) (Signed) ELMER DOVER, *Assistant Secretary.*

(T. D. 39186—G. A. 8550.)

Hollow building brick.

The phrase "brick not specially provided for" in paragraph 71 of the act of 1913 embraces an article of any shape or form made of clay and burned to a certain hardness that is used as ordinary brick is used in the construction of the walls and other parts of buildings.

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United States General Appraisers, New York, June 26, 1922.

In the matter of protests 937291, etc., of M. V. Crabtree against the assessment of duty by the collector of customs at the port of Seattle.

[Reversed.]

Frank L. Lawrence (*Martin T. Baldwin* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence* and *Bernard Hahn*, special attorneys), for the United States.

Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers).

Protest 937291.

HAY, General Appraiser: The merchandise in the case at bar was invoiced and entered as hollow building brick. It was classified by the collector as an article of earthy or mineral substance under paragraph 81 of the act of 1913, and duty was assessed thereon at 20 per cent ad valorem as provided in said paragraph. The protestant contends that it should have been classified by the collector under paragraph 71 as brick not specially provided for and a duty of 10 per cent, as therein provided for, assessed thereon. The case was submitted upon the testimony of witnesses, samples of the merchandise, illustrative samples, and photographs showing the way in which the articles were used. The articles in question are not the shape or size of the ordinary brick of commerce. The testimony does, however, show that they are made of the same material and in the same manner. They differ from the ordinary brick in that they are larger and of a different shape and are hollow, or at least have holes running through them. The testimony shows that they are used in the same way that the ordinary brick of commerce is used in building the vertical walls of houses, and the photographs submitted show that they in every respect take the place of ordinary brick in the erection of buildings. The ordinary brick of commerce is a rectangular block of clay burned in a kiln and generally the length being twice the breadth; but neither the shape not the dimensions are the essentials of a brick, and the brick known to the tariff law is any article of any shape or form made of clay burned to a certain hardness and used as the ordinary brick is used in the construction of buildings. The article which is the subject of this protest we think responds to this definition. The material out of which the article is made, nature and manner of its fabrication, and the use to which it is put we think characterizes it as a brick.

The protest is therefore sustained and the collector will reliquidate the entry assessing duty at 10 per cent under paragraph 71. See Traitel Bros. *v.* United States (131 Fed. 994; Soule's case, Abstract 43299; Waddell & Co. *v.* United States (5 Ct. Cust. Appls. 63; T. D. 34098).

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Protest 940117 was up for consideration at the same time as the above protest and was submitted by agreement of counsel upon the same evidence as that upon which the other case has just been decided. While there is no sample of the merchandise, from the appraiser's description we have no doubt that it was practically the same as that considered by us in protest 937291, and this protest is also sustained and the collector will reliquidate the entry, assessing duty at 10 per cent under paragraph 71.

Protest 940118 was abandoned at the trial and is therefore overruled.

(T. D. 39187—G. A. 8551.)

Sewing machine parts.

The present articles are excluded from paragraph 125 of the act of 1913 (1) because while made by the casting process they are nevertheless "finished machine parts," and (2) because they are specifically and eo nomine provided for under paragraph 441 of said act as parts of sewing machines.

United States General Appraisers, New York, June 30, 1922.

In the matter of protests 940111, etc., of C. J. Tower & Sons et al. against the assessment of duty by the collectors of customs at the ports of Buffalo and Cleveland.

[Reversed.]

Barnes, Chilvers & Halstead (*Albert MacC. Barnes, jr.*, of counsel), for the importer.

William W. Hoppin, Assistant Attorney General (*John J. Mulvaney* and *Oscar Igstaedter*, special attorneys), for the United States.

Before Board 2 (FISCHER, HOWELL, and WELLER, General Appraisers).

FISCHER, General Appraiser: These protests cover certain sewing machine parts upon which duty was levied at the rate of 10 per cent ad valorem under the following provision in paragraph 125 of the act of 1913:

* * * castings of iron * * * which have been chiseled, drilled, machined, or otherwise advanced in condition by processes or operations subsequent to the casting process but not made up into articles or finished machine parts. * * *

The importers claim the articles to be properly entitled to free entry under the provision in paragraph 441 of said act for "sewing machines * * * in whole or in parts, including repair parts."

Uncontradicted testimony establishes these facts:

1. The articles were made by the casting process.

2. They are parts of White sewing machines, some ready for such use as imported, the remainder being substantially finished, requiring only minor operations more in the nature of fitting and adjusting than further manufacturing processes.

3. They can not be used for any other purpose, nor will they fit any but White sewing machines.

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Attempting to justify the collector's classification, Government counsel, in his brief filed herein, contends that "there is a specific phrase in paragraph 125 * * * which fully describes the merchandise;" and that they can not be classified under paragraph 441, because it is intended to cover only complete sewing machines imported "either assembled or knocked down."

We fail to see any merit in either of these contentions. If Congress did not specifically provide for these articles as parts of sewing machines, and thus exclude them from the casting provision, it might be true to say that paragraph 125 fully described the articles. But in view of their eo nomine provision in paragraph 441, they must be held to have lost their identity as iron castings. Even if not provided for by name, paragraph 125 expressly excludes them as "finished machine parts." The collector therefore clearly erred in classifying these articles under paragraph 125.

The contention that they are not covered by paragraph 441 scarcely warrants consideration, in view of the very clear and specific terms of the paragraph. The provision therein invoked by the importers is meaningless if it does not cover sewing machines and parts thereof, since it can not be denied that "sewing machines" cover such machines imported in an assembled or unassembled condition, leaving the words "in parts, including repair parts," to cover such parts imported as separate entities. We fail to see how Government counsel can reconcile his construction of the provision with that of the court in Durbrow *v.* United States (9 Ct. Cust. Appls. 177; T. D. 38001) involving single parts of sewing machines, to say nothing of various rulings of this board on like merchandise. To hold as sound the construction urged by Government counsel would do violence to other paragraphs of the tariff. For example, paragraph 391 provides free entry for "agricultural implements * * * in whole or in parts, including repair parts." Counsel would limit that provision to complete implements imported assembled or knocked-down, and exclude therefrom "parts" and "repair parts." Of course, with any such construction this board and the courts are at complete variance.

The claim alleged in the protests under paragraph 441 is therefore sustained and the decision of the collector in each instance is reversed.

(T. D. 39188—G. A. 8552.)

Antiques—Jewelry—Precious stones.

Certain enumerated porcelain, amber, and crystal ornaments held to be free of duty under paragraph 656, tariff act of 1913, as artistic antiquities on the evidence produced at the hearing; others held dutiable for lack of proof as to antiquity. Upon the authority of Abstract 42854, certain jade, crystal, and agate ornaments held to be suitable for use in the manufacture of jewelry and dutiable as such under paragraph 357.

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United States General Appraisers, New York, June 30, 1922.

In the matter of protests 934582, etc., of T. D. Downing Co. against the assessment of duty by the collector of customs at the port of Boston.

[Reversed in part.]

Barnes, Chilvers & Halstead (*Albert MacC. Barnes, jr.*, of counsel) for the importer.
William W. Hoppin, Assistant Attorney General (*John J. Mulvaney* and *Harry M. Farrell*, special attorneys), for the United States.

Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers).

Protest 934582.

WAITE, General Appraiser: These three protests were tried together, but we will treat them separately.

The merchandise in question in this case is reported upon by the appraiser as follows:

For purposes of consideration the merchandise subject of protest may be divided into three groups, viz:

(1) A porcelain bowl, a crystal censer, and an amber ornament, all claimed to be free of duty as artistic antiquities over 100 years old, but believed by this office not to be of the required age, and therefore dutiable at the appropriate rates under the tariff.

(2) Certain jade, agate, and crystal ornaments, entered at 20 per cent as for jewelry purposes, but returned, in accordance with the practice of this office, as "manufactures of jade, crystal, or agate, dutiable at 45 per cent ad valorem under paragraph 98."

(3) Certain jade ware, invoiced as pendants, entered at 20 per cent, but considered by this office to be jewelry, dutiable at 60 per cent under paragraph 356.

It was assessed for duty as recommended by the appraiser in the above report. The appraiser's description of the goods is borne out by the invoice, with the exception that under his second heading he speaks of certain jade ornaments. Under the third heading he speaks of jade ware invoiced as pendants. We gather from the record and evidence in the case that there were no jade ornaments as distinguished from the jade pendants.

The importer protests against the assessment as follows:

We claim that porcelain bowls in package No. 211 should be free from duty as artistic antiques over 100 years old under paragraph 656, tariff act of October 3, 1913, and that crystal and agate ornaments entered by us at a rate of 20 per cent are properly dutiable at 20 per cent ad valorem under paragraph 357, and not at 45 per cent as returned. Further, jade ornaments, entered at 20 per cent and returned at 60 per cent, are properly dutiable at 20 per cent ad valorem under paragraph 357, or as manufacture of jade at 45 per cent, under paragraph 98 of the tariff act herein mentioned. The crystal, agate, and jade are for the use in the manufacture of jewelry. One crystal censer is free of duty as artistic antique over 100 years of age, under paragraph 656, and not 45 per cent as returned by the Government. Also one amber ornament that was entered free of duty as artistic antiques over 100 years of age is properly free in accordance with our original claim under paragraph 656, and not at 10 per cent as assessed by the Government.

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The question here then resolves itself primarily and principally into a question of fact as to the antiquity of the articles and their artistic quality, the exception being with reference to the jade, agate, and crystal ornaments. Merchandise similar to these ornaments was passed upon in Abstract 42854, protest 837728, opinion by Sullivan, General Appraiser. There he holds the merchandise to be semiprecious stones suitable for use in the manufacture of jewelry and dutiable as such at 20 per cent ad valorem under paragraph 357. We think that case governs in the case at bar and therefore hold that the protest should be sustained as to the jade, crystal, and agate ornaments.

With reference to the other articles in question considerable testimony was taken from which we conclude that the overwhelming proof is to the effect that they are artistic and were over 100 years old at the time of importation.

The protest is therefore sustained.

Protest 935322.

The appraiser reports as follows:

The merchandise comprised in entry 15679, subject of protest, consists of seven articles of porcelain entered as antiques over 100 years old. A careful examination of the contents of the seven cases comprising the shipment was made by experts brought in by Customs Agent Chandler, since deceased, and in their opinion three of the articles were less than 100 years old, while the age of the remaining four was doubtful. Basing our action on this information the seven articles were reported for duty at the appropriate rates under paragraph 80.

The merchandise subject of protest, comprised in entry 17390, consists of ornaments of agate ware and crystal ware not in the form of jewelry nor, in the opinion of the examiner, suitable or intended to be made into jewelry. It was therefore returned as articles of semiprecious stone, not jewelry, dutiable at 45 per cent ad valorem under paragraph 98.

The merchandise subject of protest, comprised in entry 17391, consists of pendants of amethyst and jade and other semiprecious stones, made up in the form of jewelry, ready to be worn on the person, and therefore returned as jewelry at 60 per cent ad valorem under paragraph 356, which classification is believed to be correct.

At the hearing, however, all claims were abandoned by the importer except those upon the goods mentioned in the first paragraph of the appraiser's report, described as seven articles of porcelain specifically described in the invoice under numbers 19, 81, 100, 118, and 128. No. 19 covers two white porcelain incense burners; No. 81 two porcelain vases; No. 100 one porcelain vase; No. 118 one porcelain vase; No. 128 one porcelain bell. No. 19 was assessed for duty at 50 per cent under paragraph 80 of the act of 1913 as white china. Nos. 81, 100, 118, and 128 at 55 per cent under the same paragraph as decorated china.

The only question, then, for us to determine in this case is as to whether these were artistic antiquities over 100 years old at the time of importation.

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Five witnesses were sworn at the hearing and their testimony with reference to the two porcelain vases, item No. 81 on the invoice, indicates that there is a good deal of doubt as to their antiquity. As to these articles then we conclude the importer has failed to establish by a preponderance of evidence the claim made in his protest. As to the other articles in question four witnesses testified to their artistic merit and antiquity with a good deal of positiveness, while one witness denied the antiquity of most of them in positive terms and was doubtful as to the other. We conclude, therefore, from the testimony that the importer has established his claim with reference to the articles in question with the exception of those under item No. 81 of the invoice described as two porcelain vases.

The protest is therefore sustained as to all the articles enumerated above except as to the vases, item No. 81. As to those it is overruled.

Protest 937293.

The appraiser reports as follows:

The merchandise subject of protest consists of various articles (amber ornaments, glass pendants, porcelain vases, etc.), entered as and claimed to be free of duty as artistic antiquities over 100 years old, paragraph 656. In the opinion of this office and upon evidence obtained by the special agent's office the articles in question were not produced more than one hundred years prior to importation, and are dutiable as classified.

The protest is in the following language:

Notice of dissatisfaction is hereby given and protest is hereby made against your decision, liquidation, and assessment of duties at various rates on amber ornaments, laquer inro, rhinoceros horn bowl, glass pendants, porcelain vases, jade teapot, coral ornaments, stands, teapot, vases, and ornaments covered by the entries below named, or other merchandise covered by said entries and contained in the cases or packages marked and numbered as below stated. The reasons for objection are as follows: We claim that all of said articles were entitled to entry free of duty under paragraph 656 of the tariff act of October 3, 1913, and the glass pendants (A 8 and B 2325) if dutiable, were dutiable at 45 per cent under paragraph 84, at 30 per cent under paragraph 95, or at 20 per cent under paragraph 357 of said act.

The items enumerated upon which claim is made are as follows: 54, 55, 56, 57, 58, 59, 60, 62, 36, U 161, A 8, B 2325, 8, 9, 16, 50, 63, 10, 11, 19, 4, 22, 23, 24, 48, 51, 49.

With reference to No. A 8, glass pendants, there seems to be no testimony, which is also true of B 2325. The latter number is probably a mistake, as no such number seems to be found on the invoice. There is, however, A 2325, glass pendants, which was treated the same as A 8 and no testimony was given with reference to it. With these two exceptions considerable testimony was taken with reference to the items mentioned in the protest, from which we conclude that all of the articles mentioned are artistic and more than 100 years old at the time of importation with the exception of No. 48,

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described in the invoice as one jade teapot, white with cover, and No. 63, described as one coral ornament. The testimony seems to show that this ornament is mounted upon a base. The majority of the witnesses agree that the base is modern. No separate price nor description is given of the base as distinguished from the ornament itself, nor of the ornament separate from the base; hence it is impossible to make a finding with reference to the antique part separated from the modern. With reference to the last two mentioned articles and A 8 and A (B) 2325, referred to above, the protest is overruled. The other articles enumerated are held to be as claimed by the importer and free of duty. As to those the protest is sustained.

(T. D. 39189—G. A. 8553.)

Amendment of entry of merchandise.

1. ENTRY.

The word "entry" as used in the following language of paragraph I of section 3 of the act of 1913, to wit: "At the time when he shall make entry of such merchandise, but not after either the invoice or the merchandise has come under the observation of the appraiser, make such additions, etc.," means and refers to the bill of entry, or first paper or declaration by the importer.

2. APPRAISER—EXAMINERS.

Assistant appraisers, deputy appraisers, and examiners of merchandise are duly authorized by law, and in the very necessity of the case in large ports discharge the duties devolved upon the appraiser so far as their practical discharge is concerned.

3. "OBSERVATION OF THE APPRAISER."

An invoice of imported merchandise duly entered has come under the observation of the appraiser when the same has been duly forwarded by the collector and received at the appraiser's office, whether it has received the ocular examination of the appraiser or not. The merchandise has come under the observation of the appraiser within the meaning of paragraph I of section 3 of the act of 1913 when it has come under the observation of and been examined by a duly appointed examiner who is a subordinate of the appraiser.

United States General Appraisers, New York, June 30, 1922.

In the matter of protest 937970 of the MacMillan Co. against the assessment of duty by the collector of customs at the port of New York.

[Affirmed.]

Curie, Lane & Maxwell (*Thomas M. Lane* of counsel) for the importer.

William W. Hoppin, Assistant Attorney General (*Marcus Higginbotham, jr.*, special attorney), for the United States.

Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers).

HAY, General Appraiser: Certain books were imported by the protestant and duly entered by him on the 24th day of March, 1920. Two cases of the said books were designated by the collector for examination, and presumably sent to the appraiser's stores for such

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purpose, and examined by the examiner whose duty it was to examine merchandise of that character, one case on the 5th of April and the other case on the 6th of April, 1920. The invoice was received at the appraiser's office on March 26, 1920. The examiner advanced the value of the books in question and reported the same to the assistant appraiser at the port of New York on the 26th of April, 1920, and on the same date the assistant appraiser approved the finding of value by the examiner, and on the 27th day of April the report of the assistant appraiser was approved by the appraiser of the port of New York. On April 8, 1920, two and three days, respectively, after the cases of merchandise were examined by the examiner and 13 days after the invoice had been received at the appraiser's stores, the protestant made application to the collector to amend his entry by adding to make market value the discounts in excess of 33⅓ per cent. Said application was denied by the collector on the ground that the invoice had come under the observation of the appraiser before that application was made. The protestant contends that this was not true, as it had only come under the observation of the examiner at that time but was not approved by the assistant appraiser until the 26th of April and by the appraiser until the 27th of April. The above and foregoing facts appear by a stipulation made and entered into between the attorney for the protestant and the Assistant Attorney General.

The appraised value exceeded the entered value, and hence the collector, operating under the provisions of paragraph I of section 3 of the act of 1913, assessed additional duty in accordance with said paragraph. If the protestant had been permitted to amend his entry as he sought to do on the 8th of April, paragraph I would not have been operative, as the appraised value would not have exceeded the entered value.

The sole question is, Should the collector have permitted the protestant to amend his entry? The statute which governed the action of the collector and which he cites to justify the same is the same statute which the importer contends gave him the right to amend his entry as he applied to the collector for the privilege of doing on April 8. That statute is to be found in paragraph I of section 3 of the act of 1913, and reads as follows:

> That the owner, consignee, or agent of any imported merchandise may, at the time when he shall make entry of such merchandise, but not after either the invoice or the merchandise has come under the observation of the appraiser, make such addition in the entry to or such deduction from the cost or value given in the invoice or pro forma invoice or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise or lower the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States, in the principal markets of the country from which the same has been imported. * * *

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The first question, of course, that arises is, Was the 24th day of March, 1920, the day upon which the protestant made entry of his merchandise within the meaning of paragraph I, supra? We think there can be no doubt but that it was. In F. C. Cassel's case, G. A. 5962 (T. D. 26147), we reviewed the authorities with reference to what constitutes an entry of merchandise, and while "entry" as used in the customs laws has not always the same meaning, as it is sometimes used to denote the series of acts which constitute the complete transaction by which the importer obtains the entrance of his goods into the body of the merchandise of the United States, there can be no doubt, we think, but that in the case at bar it refers to the bill of entry or first paper filed by the importer. The very language of paragraph I, "shall make entry of such merchandise," indicates, we think, the act of bringing the merchandise into a port of the United States and filing with the collector such paper as is required by law to permit its entry. But aside from this construction of the language the purpose of the act would be entirely destroyed were we to hold that the word "entry" in this connection meant the entire transaction by which the merchandise is passed through the customs and is made a part of the commerce of the country, because before that could happen not only the invoice but the merchandise, or some part of it at least, would have to come under the observation of the appraiser or some one acting as an appraiser, hence there would be no time when an entry could be amended. The word "entry" therefore as used in this statute means the bill of entry or first paper or declaration filed by the importer. This was filed by him on the 24th day of March, 1920.

The question remaining to be determined is, Did the invoice or the merchandise come under the observation of the appraiser before the 8th day of April, 1920? While any doubt with reference to the construction of a statute under which customs duties are levied should be resolved in favor of the citizen, no statute should ever be given such a construction as would render it inoperative or ridiculous. It is a matter of common knowledge, at any rate a matter of statute of which this board should take judicial notice, that at the port of New York and some of the other large ports of the country there are assistant appraisers, deputy appraisers, and examiners of merchandise, all of whom are authorized by law and appointed to be the eyes, the hands, and the voice of the appraiser. They discharge the duties devolved upon the appraiser so far as their practical discharge is concerned, and he acts simply as a supervising officer. It is a matter of common knowledge of which, too, we should take judicial notice, that the volume of business at the port of New York and other large ports is so great that the appraiser having but one pair of eyes could not examine or have brought under his observation all

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of the invoices which come to his office, nor examine all of the merchandise that it is his duty to appraise. It would be equally impossible for the assistant appraisers to accomplish this task. Hence the large number of examiners which are provided by law to assist the appraiser in his work. It seems to us that it would render this statute nugatory were we not to hold that when an invoice in the due course of business reaches the appraiser's office from the collector's office it has, within contemplation of law, come under the appraiser's observation. We think, too, that when the merchandise has been examined and reported on by one of the examiners duly authorized by law to discharge such duty as a subordinate of the appraiser, the merchandise has come under the observation of the appraiser.

Upon this exact question we know of no decision heretofore rendered; and as the attorney for the protestant has filed an able and exhaustive brief in the case and has failed to cite any, we think it fair to assume that the exact question has not heretofore arisen. But the construction which we have placed upon the statute seems to us to be necessary in order that its purposes may be carried out and the customs administration proceed orderly.

The protest is therefore overruled.

(T. D. 39190—G. A. 8554.)

Molding sand.

A commodity which is 66.50 per cent pure silica, the remaining 33.50 per cent being distributed among four other ingredients, and which is used in making molds for castings, tubes, and other metal articles, and for a considerable period of years prior to the World War had been classified as sand, is sand within the meaning of paragraph 614 of the act of 1913, and should be admitted free of duty as such.

United States General Appraisers, New York, June 30, 1922.

In the matter of protests 942688, etc., of Maine Central Railway Co. against the assessment of duty by the collector of customs at the port of Portland, Me.

[Reversed.]

Walter B. Grant for the importer.

William W. Hoppin, Assistant Attorney General (*Pelham St. George Bissell*, special attorney), for the United States.

Before Board 3 (WAITE, HAY, and ADAMSON, General Appraisers).

HAY, General Appraiser: The merchandise which is the subject of these protests is described on the invoices as sand. It was assessed for duty by the collector as clay unwrought under paragraph 76 of the act of 1913. The protestant contends that it should be admitted free of duty as crude sand under paragraph 614. The testimony is that the commodity in question is used in making molds for casting tubes and other metal articles. There is also testimony that prior

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to the recent World War the commodity was admitted at the port of Portland, where this merchandise was imported, free of duty as sand. There was offered and received in evidence the report of an analysis made by the chemist connected with the appraiser's office at the port of New York. This analysis reads: 66.50 per cent silica; 18.60 per cent alumina (and iron oxide); 2.90 per cent magnesium oxide; 7.52 per cent ignition; 4.48 per cent alkalies and undetermined.

The chemist adds:

> The sample has the composition and properties of a clay.

This opinion expressed by the chemist can scarcely be conclusive or even controlling as to the classification of the merchandise, for while the ingredients as stated in the analysis are doubtless all contained in clay it can hardly be said, and we think the chemist scarcely intended it to be understood, that a commodity which is 66.50 per cent pure silica or sand is clay. In F. B. Vandegrift & Co.'s case, Abstract 12241 (T. D. 27493), we held that a commodity containing 86.8 per cent sand and 13.2 per cent clay should be classified as sand for tariff purposes. In that case we said:

> We can scarcely believe that in admitting sand to the free list Congress intended only such sand as was absolutely clean and pure. Unless such was their intention, there is no justification for assessing duty on the merchandise in question in this case. For all practical purposes the commodity in question is sand, and, as such, we think it should be admitted free.

It would be drawing the line a little too fine we think to say that a commodity which was 86.8 per cent sand should be classified as sand and one which was but 66.50 per cent should be classified under some other provision of the law. We are therefore of the opinion that the commodity in question should be admitted free of duty under the provisions of paragraph 614. We are fortified in this opinion not only by the use to which the commodity is applied but by the fact that for a long period of time prior to recent years the same commodity was classified as sand, which we are inclined to think constitutes a practical construction of the law. While probably not sufficient to invoke the rule of stare decisis in its technical sense, it should influence us at this time in determining the classification of the commodity.

The protests are therefore sustained and the collector will reliquidate the entries admitting the commodity in question free of duty under the provisions of paragraph 614.

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(T. D. 39191.)

Signature of protest.

YEE CHONG LUNG & CO. ET AL. *v.* UNITED STATES (No. 2171).

1. AGENCY.

Based upon the legal proposition of qui facit per alium facit per se, it has long been the law that a protest made by an agent is in law made by the principal.

2. POWER OF ATTORNEY—CONSTRUCTION OF ARTICLE 221, CUSTOMS REGULATIONS, 1915.

Article 221, Customs Regulations, 1915, providing that "a power of attorney may be executed for the transaction of a specified part or for all of the customs business of the principal" is permissive and not mandatory. It does not require that such power of attorney must always be on file with the collector of customs in order to authorize an agent of an importer to file a protest in his behalf. Whether, if mandatory, it would be lawful, is not considered.

3. EVIDENCE, PRESUMPTION—AGENCY.

At the trial before the Board of United States General Appraisers of protests signed in a representative capacity, the authority of the signers not being challenged will be presumed.

4. ATTORNEY AT LAW—EVIDENCE OF AUTHORITY.

In conformity with the general rule that the appearance of an attorney in court is presumptive evidence of his authority, the appearance of an attorney in good standing before the Board of United States General Appraisers, prosecuting two protests, one signed by himself as agent and the other signed by another person as agent, raises a presumption that the protests were authorized and filed by the authority of the importers.

United States Court of Customs Appeals, June 29, 1922.

APPEAL from Board of United States General Appraisers, T. D. 39123 (G. A. 8535).

[Reversed.]

Frank L. Lawrence (*Thomas M. Lane, Martin T. Baldwin, Barnes, Chilvers & Halstead, Brooks & Brooks, Allan R. Brown, Churchill, Marlowe & Hines, Comstock & Washburn, Curie, Lane & Maxwell, Thomas J. Doherty, John G. Duffy, Benjamin A. Levett, Sharretts, Coe & Hillis,* and *Walden & Webster* of counsel) for appellants.

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

[Oral argument June 6, 1922, by Mr. Lane and Mr. Lawrence.]

Before SMITH, BARBER, and MARTIN, Associate Judges; DE VRIES, Presiding Judge, participating in the decision by agreement of counsel.

BARBER, Judge, delivered the opinion of the court:

Paragraph N of section 3 of the tariff act of 1913, among other things, provides that the decision of the collector as to the rate and amount of duties upon imported merchandise shall be final and conclusive against all parties interested therein "unless the owner, importer, consignee, or agent of such merchandise" shall file a protest or protests in writing with the collector, etc.

The two protests involved in this case were duly filed and the sufficiency thereof, except as hereinafter stated, is not challenged.

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One protest was signed "Yee Chong Lung & Co. By F. L. Lawrence, atty." and the other by "Chan Ning Tong & Co. By R. C. Robinson."

Yee Chong Lung & Co. and Chan Ning Tong & Co. are the importers.

F. L. Lawrence, before the day on which these protests were filed, had been duly admitted to practice before the Board of United States General Appraisers, was then and ever since has been an attorney in good standing before said board, and was likewise admitted as an attorney of record of this court, and was and is likewise in good standing here.

In his letters transmitting the protests and other papers to the Board of General Appraisers the collector stated:

> There is no power of atty. on file in the custom house at San Francisco authorizing F. L. Lawrence to sign for Yee Chong Lung & Co.

And in like manner stated there was no power of attorney on file authorizing Robinson to sign the other protest.

In due course the protests came on for hearing before the Board of General Appraisers. Thereat the said Mr. F. L. Lawrence appeared as attorney for both importers, and was so entered upon the record. Mr. Isenschmid appeared as the special attorney for the United States. The protests were heard together. Mr. Lawrence as attorney for the importers introduced evidence in their behalf, and cross-examined a witness called by the Government. The case was submitted on the testimony with time fixed by the board for filing briefs, all in ordinary course of procedure before the board. Briefs were filed by the attorneys.

Neither on trial nor in the briefs was any objection or claim made on behalf of the Government that the protests were insufficient for any reason. The board did not make any such suggestion during the trial.

In due course the majority of the Board of General Appraisers, one member dissenting, rendered its opinion that the protests were insufficient, because no proof had been given at the hearing "that the persons who signed the protests sustained the relation to the parties or merchandise mentioned in the statutes," and dismissed the same.

On the hearing of the appeal in this court the only question argued or considered is whether this conclusion of the board should or should not be sustained.

In considering this case it must not be overlooked that no claim is made by anybody that importers had not in fact given authority to Lawrence and Robinson to sign and file these protests for them. And there is no doubt that heretofore both the board and this court have considered and disposed of protests, which were assumed to be

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sufficient, but against which the same objections might have been made as are urged to the protests in question.

Based upon the legal proposition of qui facit per alium facit per se, it has long been the law that a protest made by an agent is in law made by the principal. Gray *v.* Lawrence (3 Blatch. 117; Fed. Cases, vol. 10, 1031); Wells, Fargo & Co. *v.* United States (7 Ct. Cust. Appls. 346; T. D. 36903) and cases there cited.

The Government argues that article 221 of the Customs Regulations of 1915, which provides in part that "a power of attorney may be executed for the transaction of a specified part or for all the customs business of the principal" was probably in the mind of the collector when he forwarded the papers to the board, and justifies the disposition made by that tribunal of this question.

Without further consideration of this phase of the case, we think it must be held that the provisions of this article are permissive and not mandatory, and do not require that a power of attorney to that effect must always be on file with the collector of customs in order to authorize an agent of an importer to file a protest in his behalf. Whether if mandatory in terms it would be lawful is not considered.

Assuming as to both protests that the question of agency was one of fact, proof of which might be made whenever challenged, and that evidently was the reasoning of the board, in view of its statement that no proof of authority to sign the protests was offered, we are of opinion, under the circumstances disclosed by this record not necessary to repeat, that the Board of General Appraisers, upon its own theory, erred in not giving to importers the opportunity to prove, if they could, authorization by them of their respective agents.

But aside from this, it has long been and now is the law of the United States that the appearance of an attorney in court for a party is evidence of his authority, or, as stated in Hill *v.* Mendenhall (88 U. S. 453):

> When an attorney of a court of record appears in an action for one of the parties, his authority, in the absence of any proof to the contrary, will be presumed. A record which shows such an appearance will bind the parties until it is proven that the attorney acted without authority.

See also Osborn *v.* United States Bank (9 Wheat. 738 at 830); Aaron *v.* United States (155 Fed. 834); Underfeed Stoker Co. *v.* American Ship Windlass Co. (165 Fed. 65); Brown *v.* Arnold (131 Fed. 723 at 725); Treat *v.* Tolman (113 Fed. 892).

This last-cited case clearly points out the distinction between an attorney in fact and an attorney at law.

In the case at bar Mr. Lawrence has appeared as attorney for the importers and conducted for them the litigation of the issues raised by the protests. Applying the rule of the cases last-above cited, it

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must be presumed that he had authority so to do. The importers by him have recognized the protests as theirs, prosecuted the same before the board, and tried the issues made thereby. From all this it must, at least prima facie, be presumed that the protests were authorized and filed by the authority of the importers.

The Board of General Appraisers is a judicial tribunal with records. It has adopted rules for the admission, enrollment, and disbarment of attorneys practicing before it. Undoubtedly it intends to accord, and should accord, such attorneys the rights, privileges, and authorities with which attorneys in other courts are presumed to be invested.

The issues raised by the protests as to the classification of the merchandise were litigated before the board, but although intimating its views upon the same, it did not decide them. For that reason the case must be remanded.

The judgment of the Board of General Appraisers is reversed, and the cause remanded for further proceedings not inconsistent with the views herein expressed.

(T. D. 39192.)

Petition of appellant for rehearing.

UNITED STATES *v.* VANDERGRIFT & CO. (No. 2149).

1. Failure of the importer in a former case to prove a fact should not operate to the disadvantage of an importer who subsequently by a preponderance of credible evidence established the classification for which the earlier importer contended.

2. Issues of fact and the rights of litigants dependent thereon must be adjudicated on the evidence which such litigants see fit to submit to the courts, and the consequences of a lack of proof ought not to be visited in a subsequent case on litigants who were not parties to the original proceedings.

United States Court of Customs Appeals, June 29, 1922.

[Petition for rehearing denied.]

William W. Hoppin, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

Comstock & Washburn (*J. Stuart Tompkins* of counsel) for appellees.

Before DE VRIES, Presiding Judge, and SMITH and MARTIN, Associate Judges.

Per curiam.

The appellant in this case petitions for a rehearing on the ground, first, that the rugs are Axminster rugs, and second, that the decision of this court rendered herein is a reversal of its decision in Beuttell *v.* United States (8 Ct. Cust. Appls. 419) and United States *v.* Gertzen (8 Ct. Cust. Appls. 428).

In the present case we held that paragraph 300 of the tariff act of 1913 covered both hand-made and machine-made rugs woven whole for rooms as complete single entities, but that it did not include rugs

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which were portions of carpeting or which were made from carpets or carpeting. We find nothing in the Beuttell case which is either inconsistent or at variance with that holding.

In the Gertzen case the merchandise described as rugs Tozeur and rugs Bulgare was classified by the collector and returned to the board as Axminster rugs.

Rudolph Deutsch, a witness for the importer, said that the rugs were complete chenille rugs, and claimed that they were carpet or carpeting. He further testified as follows:

Q. What is an Axminster rug as understood by the trade?—A. An Axminster rug is a high-price rug made either on a patented Axminster loom or made out of the chenille first and attached to the back, woven on the back.

Q. Does that last description you have given cover this article before you?—A. *Well, it might cover it, but there is a difference between Axminster and chenille. To-day Axminster rugs are only what they call Axminster, all made on a patented Axminster loom.*

Q. (By General Appraiser McClelland.) Do you rest your claim upon the statement that this is a carpet rather than a rug?—A. *Well, I put my claim in that this is a carpet, carpeting; carpet or carpeting. It is not a rug, it is not made wholly for a room, that is my claim.*

Q. *It is your experience that all rugs that are used as such* cover the entire room?—A. *Under paragraph 300; yes.*

Q. I am not talking about paragraph 300, I am talking about rugs.—A. No; they do not cover the entire room. * * *

Q. (By General Appraiser Brown.) How is Axminster carpeting made as distinct from Axminster rugs?—A. Woven the same as this [sample], only we can weave this 30 yards by changing the picker. We can make 30 yards of the carpet. * * *

This witness furnished little information as to the methods of manufacture and contented himself with stating that the rugs were made on the same loom "which makes carpets." He pointed out at the same time, however, that "you can make carpets any width almost, to 9 feet."

Maurice E. O'Brien, called as a witness *by the importers*, testified that the merchandise was neither carpet nor carpeting, but Axminster rugs, and that as examiner of merchandise he so returned it.

Q. (By Mr. Deutsch.) You know the merchandise?—A. Yes.

Q. You returned it at 50 per cent under paragraph 300?—A. I presume that is what I would return it at, by virtue of the proviso of paragraph 303—rugs for floors, and so on.

Q. (By General Appraiser McClelland.) In the condition in which this is imported, is it either carpet or carpeting?—A. No, sir.

Q. What is it?—A. An Axminster rug.

Q. (By General Appraiser Brown.) Did you return this article, Exhibit 1?—A. Yes, sir.

Q. You passed it under paragraph 300?—A. Yes, sir.

Q. (By Mr. Deutsch.) Wilton rugs, tapestry rugs, and chenille rugs you claim are carpet or carpeting?—A. Yes, sir.

Q. And this is carpet or carpeting?—A. I do not claim anything of the sort. I claim this is specially provided for in paragraph 300, while the others are not provided for under any paragraph except carpet and carpeting. This is the action of this office indorsed by the department.

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Q. This paragraph says carpets of every description woven whole for rooms.—A. It also says Axminster rugs.

Q. (By General Appraiser BROWN.) Have you ever seen Axminster rugs that are not woven whole for rooms?—A. Yes.

Q. There is a dictionary definition that says they are made mostly for rooms. You think that dictionary is wrong?—A. No; we have Axminster rugs woven whole for rooms.

Q. Some dictionary defines this class of rugs, describing them as rugs woven whole for rooms. If that description is given of Axminster rugs, you say that would not be correct; there would also be Axminster rugs not woven wholly for rooms?—A. Yes, sir.

On this testimony the board found that the rugs were not Axminster rugs, although similar thereto. The board further held that the rugs were machinemade entirely and that the material was woven on a carpet loom and then cut to make rugs, the raw edges being bound and fringed.

The record does not show that the rugs were woven in running lengths which, by cutting at regular intervals and binding the shorter lengths, were converted into rugs. True, Rudolph Deutsch testified that the rugs were woven on carpet looms and that they were carpets or carpeting, but from that testimony it can not be inferred that they were woven in running lengths or that by further manufacturing processes they were converted into the finished product. Carpets and rugs woven whole for rooms as single entities are also woven on carpet looms, and all rugs whether woven whole as single entities or made of running lengths are a kind of carpet or carpeting. Rugs are finished floor coverings and are therefore not carpeting in the sense that they are materials for making rugs and carpets.

On the testimony of one of the witnesses for the importer that the rugs were carpets or carpeting made on carpet looms and of another witness for the importer that they were machinemade Axminster rugs, this court sustained the classification of the collector and held that the merchandise was machinemade Axminster rugs, dutiable under paragraph 300.

The Government contends that there is no evidence that machinemade rugs are ever made singly, and that if so woven they are made according to specifications and are, accurately speaking, not rugs, but carpets woven whole for rooms. The point is in effect a contention that rugs woven whole as complete single entities are not articles of commerce.

We can not agree with the Government that rugs are never woven whole as single entities. Neither can we concede that a floor covering woven as a complete single entirety according to specifications is necessarily and accurately speaking not a rug, but a carpet woven whole for rooms. Whether a rug is a carpet or a carpet is a rug depends on the floor space covered, and as paragraph 300 provides for carpets woven whole for rooms, it necessarily provides for rugs

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woven whole as single entities. Indeed, considering that a carpet woven whole according to specifications for a given room becomes a rug when transferred to a larger room, it can not be very well argued that carpets woven whole for rooms are manufactured as articles of commerce, but that rugs which cover only a part of the floor are not manufactured at all.

The rugs in the Gertzen case may have been manufactured in exactly the same way as the rugs involved in the present issue, but if they were, the failure of the importer in the Gertzen case to prove that fact should not operate to the disadvantage of an importer who subsequently, by a preponderance of credible evidence, established the classification for which the earlier importer contended. Issues of fact and the rights of litigants dependent thereon must of necessity be adjudicated on the evidence which such litigants see fit to submit to the courts, and it is apparent that in justice the consequences of a lack of proof ought not to be visited in a subsequent case on litigants who were not parties to the original proceedings.

Petition for rehearing denied.

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ABSTRACTS OF OTHER BOARD CASES.

The following abstracts of decisions of the Board of United States General Appraisers at New York are published for the information and guidance of officers of the customs and others concerned. While the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

BEFORE BOARD 1, JANUARY 3, 1922.

No. 44675.—Protests 940678, etc., of David T. McKelvey et al. (New York).

RUGS.—Certain rugs made from Axminster or chenille carpeting were classified at 50 per cent ad valorem under paragraph 300, tariff act of 1913.

Opinion by BROWN, G. A. As the appraiser reports that the merchandise is similar in character to that the subject of United States *v.* Trorlicht, Duncker Carpet Co. et al. (10 Ct. Cust. Appls. 254; T. D. 38618), the protests claiming duty at 35 per cent under paragraph 293 are sustained as to the items enumerated.

No. 44676.—Protests 940905, etc., of Snows (Ltd.) et al. and protests 940948, etc., of J. F. Douglas & Co. (New York).

FLANNELS.—Certain merchandise classified at 35 per cent ad valorem under paragraph 288, tariff act of 1913, as wool cloth, is claimed dutiable at 25 per cent or 30 per cent under paragraph 289.

Opinions by BROWN, G. A. By consent of counsel the appraiser's reports were admitted in evidence, showing that in view of Connor et al. *v.* United States (9 Ct. Cust. Appls. 312; T. D. 38241), the merchandise would now be returned for duty as flannels at 30 per cent under paragraph 289. The protests were therefore sustained to that extent.

BEFORE BOARD 2, JANUARY 3, 1922.

No. 44677.—Protests 938420, etc., of Case & Co. (New York).

JACQUARD FIGURED UPHOLSTERY GOODS—LACES.—Two patterns of a lot of Jacquard figured laces classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as Jacquard figured upholstery goods at 35 per cent under paragraph 258.

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Opinion by HOWELL, G. A. On stipulation of counsel it is agreed that the merchandise in question consists of Jacquard figured cotton laces used chiefly for the interior decoration of apartments, and following Mills & Gibb (G. A. 8187; T. D. 37723), the items enumerated are held to be properly dutiable at 35 per cent under paragraph 258. In all other respects the protests are overruled.

BEFORE BOARD 3, JANUARY 3, 1922.

No. 44678.—Protests 941408, etc., of Strauss Bros. & Co. et al. (New York).

JAPANESE CONSUMPTION TAX.—These protests challenge the action of the collector in including in the dutiable value of merchandise imported from Japan an addition made to cover the Japanese home consumption tax, the importers claiming that such tax forms no part of the dutiable or market value.

Opinion by HAY, G. A. Following Gimbel Bros. et al. (G. A. 8430; T. D. 38713), the protests were overruled.

No. 44679.—Protest 941616 of Hudson Forwarding Co. (New York).

GERMAN TAX—ENTERED VALUE.—Certain merchandise assessed for duty on the entered value in accordance with the provisions of paragraph I, section 3, tariff act of 1913, are claimed to include in the value upon which duty was assessed certain items of Ausschlag, export, luxury, de luxe, and other taxes, which are not dutiable.

Opinion by HAY, G. A. As no testimony was introduced in support of the claim of the importer, the protest was overruled.

BEFORE BOARD 2, JANUARY 5, 1922.

No. 44680.—Protests 935921, etc., of A. H. Ringk & Co. et al. (New York).

CELLOPHANE IN SHEETS OR ROLLS.—Cellophane in filament form, or artificial silk known as zylophose, cellophane, etc., in sheet form, classified at 35 per cent ad valorem under paragraph 319, tariff act of 1913, for yarns, threads or filaments of artificial silk, are claimed dutiable at various rates, one of which is 15 per cent under paragraph 385, as a nonenumerated manufactured article.

Opinion by HOWELL, G. A. From the evidence it appears that part of the merchandise consists of cellophane imported either in the form of sheets or in the form of rolls, and is of the same dutiable character as the cellophane strips and sheets mentioned in Rolland Freres, G. A. 8459 (T. D. 38816). As to these articles, the protests claiming the merchandise dutiable as a nonenumerated manufactured article at 15 per cent under paragraph 385, are sustained.

No. 44681.—Protests 937648-62833 of G. W. Sheldon & Co. (Chicago).

COTTON TAPES.—Cotton tapes classified as braids at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 25 per cent under the provisions of paragraph 262.

Opinion by HOWELL, G. A. The testimony shows that the merchandise in question consists of cotton tapes of the same dutiable character as the tapes the subject of decision in Mills & Gibb, G. A. 6278 (T. D. 27060), but as cotton tapes are not denominatively provided for in the present tariff act, it is held that the tapes in question are properly dutiable as fabrics with fast edges not exceeding 12 inches in width at 25 per cent under paragraph 262. The protest is therefore sustained to this extent.

No. 44682.—Protests 938281, etc., of Mills & Gibb Corporation et al. (New York).

JACQUARD FIGURED UPHOLSTERY GOODS—LACES.—Jacquard figured laces classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed to be Jacquard figured upholstery goods dutiable at 35 per cent under paragraph 258.

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Opinion by HOWELL, G. A. The evidence shows that the merchandise consists of Jacquard figured laces composed wholly or in chief value of cotton or other vegetable fiber, used principally for the interior decoration of apartments. Following Mills & Gibb (G. A. 8187; T. D. 37723), it is held that the laces in question are properly dutiable as Jacquard figured upholstery goods at 35 per cent under paragraph 258. To that extent the protests are sustained. United States *v.* Mills & Gibb (8 Ct. Cust. Appls. 422; T. D. 37667) cited.

No. 44683.—Protest 938539 of B. Ulmann & Co. (New York).

TAPESTRY—EMBROIDERY—MANUFACTURES OF WOOL—Certain merchandise described as tapestry cushion, classified as embroidered articles at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed to be pieces of woven cotton or flax canvas on which an ornamental design in colored wool yarns has been stitched with a needle.

Opinion by HOWELL, G. A. From the evidence it is held that the merchandise is of the same dutiable character as was the subject of United States *v.* Field (10 Ct. Cust. Appls. 183; T. D. 38550), and is properly dutiable as a manufacture of wool at 35 per cent under paragraph 288. To that extent the protest was sustained.

No. 44684.—Protest 939287 of B. Altman & Co. (New York).

BEADED TRIMMINGS—SPANGLED ARTICLES.—Certain beaded or spangled articles classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed to be articles composed in chief value of beads or spangles dutiable at 50 per cent under paragraph 333.

Opinion by HOWELL, G. A. From the special report of the appraiser it is held that the merchandise consists of trimmings or ornaments composed in chief value of beads or spangles, and are of the same character as the articles the subject of Loewenthal *v.* United States (6 Ct. Cust. Appls. 209; T. D. 35464). Following that decision the goods in question are held to be properly dutiable at 50 per cent under paragraph 333, and to that extent the protest was sustained.

No. 44685.—Protest 940017 of I. S. Wolf & Co. (New York).

COTTON FABRICS.—Woven fabrics composed of cotton and artificial silk, classified as articles composed in chief value of artificial silk at 60 per cent ad valorem under the provisions of paragraph 319, tariff act of 1913, are claimed to be goods composed in chief value of cotton and properly dutiable as manufactures of cotton at 30 per cent under paragraph 266.

Opinion by HOWELL, G. A. On stipulation of counsel it is agreed that certain items are composed of cotton and artificial silk, cotton being the component material of chief value, and it is therefore held that such merchandise is properly dutiable as manufactures of cotton at 30 per cent under paragraph 266. To that extent the protest was sustained.

BEFORE BOARD 3, JANUARY 5, 1922.

No. 44686.—Protests 939184, etc., of N. Erlanger, Blumgart & Co. et al. (New York).

INSPECTION CHARGES.—These protests challenge the action of the collector in including in the dutiable value of the imported merchandise items of inspection charges, the collector maintaining that the cost of inspection is an expense incident to placing the merchandise in condition packed ready for shipment to the United States, and is therefore part of the dutiable value as defined in paragraph R, section 3, tariff act of 1913.

Opinion by HAY, G. A. On the authority of Abstract 44376, which followed the principle stated in Milbank, Leaman & Co. (G. A. 7506; T. D. 33832), it was held that the amount paid for inspection forms no part of the dutiable value of merchandise. The protests were sustained accordingly.

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No. 44687.—Protest 940074 of Frederick H. Cone & Co. (New York).

WEIGHT OF BRISTLES—TARE.—Certain bristles bunched, tied with string, and then wrapped for packing, were classified under paragraph 337, tariff act of 1913, as bristles, sorted, bunched, or prepared. There is no question as to the classification, but the importer contends that the collector erred in taking duty upon the invoice weight of the bristles, which, it is alleged, included the weight of paper and string. It was admitted, that to take the string and paper off of this large amount of bristles would be a hopelessly interminable task, and it would probably leave many of the bristles in an unmarketable condition. The bristles were not weighed by a Government weigher, but the invoice weight accepted by the customs authorities and duty levied accordingly.

Opinion by HAY, G. A. The testimony shows that one case was examined, and upon that basis of calculation the importer entered the merchandise. While we think there can be little doubt that it is the bristles only that are made dutiable by paragraph 337, the administration of every paragraph of the tariff law must be conducted in a practical manner. It would seem almost impossible, at least difficult and impracticable to arrive at the exact weight of the bristles imported, and we are not convinced from the testimony of the amount of tare that should be allowed. Following J. R. Collins (G. A. 1825; T. D. 13553), the protest was overruled.

No. 44688.—Protest 941905 of Park & Tilford (New York).

FRENCH TAX—ENTERED VALUE.—This protest challenges the action of the collector in assessing duty on certain perfumery at a value including the French internal-revenue tax, which the importer claims is a nondutiable item and should have been deducted.

Opinion by HAY, G. A. From the report of the collector that the item of tax in question was included in the value declared by the importer on entry, which report was approved by the appraiser, it was held that duty was properly assessed on the entered and appraised value in pursuance to the provisions of paragraphs I and M, section 3, tariff act of 1913. As the case was submitted without testimony, the protest was overruled without considering any other question presented.

BEFORE BOARD 1, JANUARY 11, 1922.

No. 44689.—Protests 931416, etc., of J. H. Dieckmann, jr., et al. (San Francisco).

CEDAR LOGS.—Spanish cedar logs classified at 10 per cent ad valorem under paragraph 169, tariff act of 1913, are claimed entitled to free entry under paragraph 648.

Opinion by MCCLELLAND, G. A. The testimony showing that the logs were not sawed within the meaning of paragraph 169, but that such sawing as they were subjected to before importation was simply for convenience and economy in transportation, the claim for free entry under paragraph 648 was sustained. Abstract 39610 followed.

No. 44690.—Protest 939316 of H. W. Robinson & Co. (New York).

NECKLACE SNAPS.—Very cheap brass snaps for necklaces classified as materials of metal suitable for use in the manufacture of jewelry at 50 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as articles of brass at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. In view of the fact that these snaps are used in the manufacture of pearl bead necklaces and such necklaces having been held to be jewelry in United States *v.* Woolworth (10 Ct. Cust. Appls. 194; T. D. 38552), they were held properly classified under paragraph 356.

No. 44691.—Protest 938453 of H. W. Hamburger & Co. (New York).

BEADS TEMPORARILY STRUNG.—Strings of graduated beads and of small beads interspersed at intervals with larger beads, classified as beaded articles at 50 per cent

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ad valorem, are claimed dutiable as beads loosely strung at only 35 per cent under paragraph 333, tariff act of 1913.

Opinion by SULLIVAN, G. A. On the record the protest was sustained as to certain items found to be temporarily strung and held dutiable at 35 per cent under paragraph 333.

BEFORE BOARD 3, JANUARY 11, 1922.

No. 44692.—Protest 942288 of A. D. Jones (St. Louis).

INSECT POWDER.—Insect powder classified as an nonenumerated manufactured article at 15 per cent under paragraph 385, tariff act of 1913, is claimed dutiable as a drug at 10 per cent under paragraph 27.

Opinion by HAY, G. A. On the authority of Abstract 44241, affirmed in United States *v.* Nagase (11 Ct. Cust. Appls.—; T. D. 38939) the insect powder in question was held dutiable under paragraph 27.

BEFORE BOARD 1, JANUARY 12, 1922.

No. 44693.—Protests 936966, etc., of Central Vermont Railway Co. et al. (St. Albans and Detroit).

BROOM HANDLES.—The question here is whether wooden handles for brushes and mops are dutiable as broom handles. They were classified at 15 per cent ad valorem under paragraph 176, tariff act of 1913, and are claimed entitled to free entry as broom handles under paragraph 647.

Opinion by MCCLELLAND, G. A. It appeared that the term "broom" is a very comprehensive one commercially and the contention that all the handles in question are broom handles, whether they are to be used in corn brooms, brush brooms for floors, or street or stable brooms made of corn, rattan, hair, or bristles, was sustained and the merchandise held free of duty under paragraph 647. G. A. 8428 (T. D. 38700) distinguished.

No. 44694.—Protests 935806, etc., of G. Amsinck & Co., Inc. (New York).

CHICLE.—Merchandise invoiced as "chicle," "gum chicle," and "crude gum chicle," and classified at 15 cents per pound under paragraph 36, tariff act of 1913, is claimed dutiable at 10 per cent under paragraph 385.

Opinion by MCCLELLAND, G. A. On the authority of Rubber Association *v.* United States (11 Ct. Cust. Appls. —; T. D. 38689) the gum in question was held dutiable under paragraph 385 as claimed.

No. 44695.—Protest 942089 of Arthur Walker & Co. (New York).

WOOLEN CLOTH.—Woolen cloth classified at 40 per cent ad valorem under paragraph 308, tariff act of 1913, is claimed dutiable at 35 per cent under paragraph 290.

Opinion by MCCLELLAND, G. A. Upon stipulation of counsel certain of the merchandise in question was held dutiable at 35 per cent under paragraph 238. Abstract 44495 followed.

No. 44696.—Protest 938269 of H. W. Robinson & Co. (New York).

FLANNELS.—Certain flannels are claimed dutiable at 30 per cent under paragraph 289.

Opinion by BROWN, G. A. It appearing that the importer is entitled to an allowance on certain items the protest was sustained accordingly and the items held dutiable at 30 per cent under paragraph 289.

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BEFORE BOARD 2, JANUARY 12, 1922.

No. 44697.—Protest 940340 of the Bertrose Co. (New York).

GALALITH BELTS.—Belts classified as trimmings in chief value of silk at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed to be composed in chief value of galalith and properly dutiable as nonenumerated manufactured articles at 15 per cent under paragraph 385.

Opinion by HOWELL, G. A. From the evidence it was found that the belts in question, which consist of narrow silk ribbon of suitable length for a belt and contain galalith ornaments, are composed in chief value of galalith. They were therefore held dutiable under paragraph 385 as claimed.

No. 44698.—Protest 938334 of Miller Bros. (New York).

GALALITH AND SILK HANDBAGS.—Handbags made of a fabric composed of silk and metal thread, or of silk, cotton, and metal thread, lined with a material composed of silk and cotton and ornamented with a trimming apparently composed of silk and metal thread, with a small mirror suspended inside the bag, having a frame of galalith and a handle of the same material as the bag, were classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913. They are claimed to be composed chiefly of galalith and dutiable at 15 per cent under paragraph 385.

Opinion by HOWELL, G. A. It appeared that the galalith frame in each bag is not only more valuable than any other single component material, but is more valuable than all the other component materials combined. It was therefore held that the handbags in question are dutiable as articles in chief value of galalith at 15 per cent under paragraph 385. Loewenthal *v.* United States (6 Ct. Cust. Appls., 209; T. D. 35464) cited. Morimura *v.* United States (6 Ct. Cust. Appls. 475, T. D. 36119) distinguished.

No. 44699.—Protest 936619 of Finch, Van Slyck & McConville (St. Paul).

JACQUARD FIGURED LACES.—Laces classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as Jacquard figured upholstery goods at 35 per cent under paragraph 258.

Opinion by HOWELL, G. A. There is nothing in this record to show that the laces in question are used for interior household decorations. The protest was therefore overruled.

BEFORE BOARD 3, JANUARY 12, 1922.

No. 44700.—Protests 940336, etc., of S. B. Penick & Co. et al. (New York).

PARSLEY SEED.—A commodity classified as parsley seed at 3 cents per pound under paragraph 212, tariff act of 1913, is claimed entitled to free entry as a crude drug under paragraph 477.

Opinion by WAITE, G. A. The parsley seed in question having a germination of not more than 17 per cent, the claim for free entry under paragraph 477 was sustained on the authority of Abstract 44395.

No. 44701.—Protest 937126 of W. P. Devereux Co. (Minneapolis).

OAT HULLS.—It is claimed here that merchandise classified as a nonenumerated manufactured article at 15 per cent ad valorem under paragraph 385, tariff act of 1913, is oat hulls dutiable at 8 cents per hundred pounds under paragraph 192.

Opinion by WAITE, G. A. On the authority of Tower *v.* United States (10 Ct. Cust. Appls., 259; T. D. 38620) the claim that the commodity should have been assessed as oat hulls under paragraph 192 was sustained.

No. 44702.—Protest 940150 of Davies, Turner & Co. (New York).

MARBLE STATUARY.—The question here is whether a marble statue representing the human form, with its pedestal, is a work of art. It was classified as a manufacture of

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alabaster at 45 per cent under paragraph 98, tariff act of 1913, and is claimed to be free of duty under paragraph 652, or dutiable at 15 per cent under paragraph 376.

Opinion by WAITE, G. A. From the evidence it was found that the piece is a work of art and the claim under paragraph 376 was sustained.

BEFORE BOARD 1, JANUARY 13, 1922.

No. 44703.—Protests 937762-62835, etc., of Mandel Bros. (Chicago).

RUGS.—Certain rugs classified as oriental at 50 per cent ad valorem under paragraph 300, tariff act of 1913, are claimed dutiable as carpets of wool or cotton at 20 per cent under paragraph 302.

Opinion by BROWN, G. A. The rugs in question were found not to be oriental and the claim for classification under paragraph 302 at 20 per cent was sustained.

No. 44704.—Protests 939116, etc., of W. B. Leonard et al., protests 936383 and 803517, etc., of Alex. Murphy & Co. (New York and Philadelphia).

FLANNELS.—Merchandise classified as wool cloth at 35 per cent ad valorem under paragraph 288, tariff act of 1913, is claimed dutiable as flannels at 30 per cent under paragraph 289.

Opinions by BROWN, G. A. Certain items were held dutiable as flannels at 30 per cent under paragraph 289. Connor *v.* United States (9 Ct. Cust. Appls. 312; T. D 38241) followed.

BEFORE BOARD 3, JANUARY 13, 1922.

No. 44705.—Protest 938338 of Rev. W. J. Kubelbeck (Duluth).

ALTAR—WORKS OF ART.—A church altar classified as a work of art at 15 per cent ad valorem under paragraph 376, tariff act of 1913, is claimed free of duty under paragraph 656.

Opinion by WAITE, G. A. The regulations of the Secretary of the Treasury not having been complied with the protest was overruled. McBride *v.* United States (1 Ct. Cust. Appls. 293; T. D. 31354) cited.

No. 44706.—Protests 938614, etc., of Frank P. Dow Co. (Inc.) et al. (Seattle and St. Louis).

JAPANESE CONSUMPTION TAX.—It is claimed here that the Japanese home-consumption tax should not have been included in the dutiable value of merchandise exported from that country.

Opinion by HAY, G. A. G. A. 8430 (T. D. 38713) followed relating to Japanese home-consumption tax. Protests overruled.

BEFORE BOARD 1, JANUARY 17, 1922.

No. 44707.—Protest 942387 of Isaac Brandon & Bros. (New York).

CHICLE.—A commodity invoiced as gum chicle and classified at 15 cents per pound under paragraph 36, tariff act of 1913, is claimed dutiable at 10 per cent under paragraph 385.

Opinion by MCCLELLAND, G. A.—On the authority of Rubber Association *v.* United States (11 Ct. Cust. Appls.—; T. D. 38689) the commodity in question was held dutiable under paragraph 385 as claimed.

No. 44708.—Protest 934120 of C. J. Tower & Sons (Buffalo).

CORK WASTE.—Merchandise described on the invoice as "baked cork waste refuse" is claimed free of duty under paragraph 464, tariff act of 1913, rather than dutiable as a manufacture of cork at 30 per cent under paragraph 340, as classified.

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Opinion by McClelland, G. A. The commodity in question was held entitled to free admission under paragraph 464. G. A. 8433 (T. D. 38717) followed.

No. 44709.—Protest 938283 of W. P. Willis & Co. (New York).

Flannels.—Certain items are claimed dutiable as flannels at 30 per cent under paragraph 289, tariff act of 1913.

Opinion by Brown, G. A. The claim that certain items are dutiable at 30 per cent under paragraph 289 was sustained.

Before Board 3, January 17, 1922.

No. 44710.—Protest 934714 of American Express Co. (New York).

Rock Crystal Ball—Antiques.—A large rock crystal ball 5½ inches in diameter and invoiced at 125 pounds sterling was classified as a manufacture of rock crystal at 45 per cent ad valorem under paragraph 98, tariff act of 1913, and is claimed free of duty as an antique under paragraph 656.

Opinion by Waite, G. A. The regulations of the Secretary of the Treasury not having been complied with, the claim for free entry under paragraph 656 was overruled. United States *v.* Thomas (3 Ct. Cust. Appls. 142; T. D. 32385) and United States *v.* Morris European & American Express Co. (3 Ct. Cust. Appls., 146; T. D. 32386) cited.

No. 44711.—Protest 941041 of Merrill, Greer & Chapman (St. Paul).

Value—Improper Remedy.—It is contended here that duty should have been assessed upon certain chinaware at a lower valuation than that shown on the entries. Duty was assessed on the entered value as appraised under section 302, emergency tariff act of May 27, 1921.

Opinion by Hay, G. A. It was found that the collector adopted the correct paragraph and assessed the correct duty upon the value at which the merchandise was entered, and if the importer had any remedy it was by appeal to reappraisement rather than by protest.

No. 44712.—Protest 937770 of the Richfield Co. (Minneapolis).

Shortage.—This protest claims an allowance in duty for a shortage of lace doilies.

Opinion by Adamson, G. A. It was found that the shortage claimed occurred before landing and the protest was sustained.

Before Board 3, January 20, 1922.

No. 44713.—Protest 938314 of S. Banno (New York).

Horsehair.—Bleached horsetails classified at 15 per cent ad valorem under paragraph 385, tariff act of 1913, are claimed free of duty under paragraph 503.

Opinion by Hay, G. A. This case was submitted upon the record in another protest, but there was no testimony identifying the merchandise. Although an examination of the samples showed great similarity, it was held that this board is not expert in the examination of merchandise of this character, and hence is unable to alter or change the classification upon a mere examination of samples. The protest was therefore overruled.

No. 44714.—Protest 940991-63078 of E. Hecht & Co. (Chicago).

Emergency Tariff Act.—Tobacco assessed for duty at $2.35 per pound under paragraph 25 of the emergency tariff act, approved May 27, 1921, is claimed dutiable at $1.85 per pound under paragraph 181, tariff act of 1913, the contention being that the importation was made prior to May 28, 1921.

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Opinion by HAY, G. A. It was found that the tobacco in question was withdrawn from warehouse and duty paid in August, 1921. On the authority of G. A. 6994 (T. D. 30443), Abstract 37922, and G. A. 8193 (T. D. 37746) the protest was overruled.

No. 44715.—Protest 940457 of H. F. L. Funke Co. (New York).

SHORTAGE.—A refund of duty is claimed here on certain chains alleged to have been short shipped.

Opinion by ADAMSON, G. A. The evidence sustaining the claim that the chains in question were short shipped, the protest was sustained.

No. 44716.—Protest 939381 of M. J. Corbett & Co. (New York).

SHORTAGE.—This protest relates to a package which was expected by parcel post but which the importer claimed never arrived.

Opinion by ADAMSON, G. A. The protest was sustained, the testimony indicating that the package in question was never received either at the appraiser's stores or in the post office.

No. 44717.—Protest 941645 of Pitzele & Hamburger (New York).

CLERICAL ERROR.—It is claimed here that through clerical error the importer was compelled to pay duty on more than the goods were actually worth on the day of sailing, according to the value of the foreign currency on that date.

Opinion by ADAMSON, G. A. Being unable to discover any manifest clerical error, the board overruled the protest.

BEFORE BOARD 1, JANUARY 24, 1922.

No. 44718.—Protest 940418 of P. R. Rincones, jr., Co. (New York).

RAWHIDE LOOM PICKERS.—Loom pickers made of rawhide, classified as manufactures of leather by similitude at 30 per cent ad valorem under paragraph 360, tariff act of 1913, are claimed dutiable as nonenumerated manufactured articles at 15 per cent under paragraph 385.

Opinion by MCCLELLAND, G. A. Rawhide having been held not classifiable for dutiable purposes as leather in Hamano *v.* United States (1 Hawaii, 344; T. D. 24946), G. A. 5749 (T. D. 25491), and Abstracts 10409 and 44346, and there being no provision in the existing tariff act for rawhide or articles made therefrom, the claim under paragraph 385 was sustained.

BEFORE BOARD 2, JANUARY 24, 1922.

No. 44719.—Protest 941082 of C. A. Stern & Co. (New York).

KRAFT PAPER—WRAPPING PAPER.—Merchandise classified as imitation parchment paper at 35 per cent ad valorem under paragraph 324, tariff act of 1913, is claimed dutiable as wrapping paper at 25 per cent under paragraph 328.

Opinion by FISCHER, G. A. The paper in question was held dutiable as wrapping paper under paragraph 328. Abstract 40242 noted.

No. 44720.—Protest 940868 of Geo. Borgfeldt & Co. (New York).

NEEDLECASES.—Paper and leather needlecases fitted with an assortment of needles were classified as manufactures of paper and leather under paragraphs 332 and 360, tariff act of 1913, and are claimed dutiable under the specific provision for needlecases in paragraph 135 at 20 per cent ad valorem.

Opinion by FISCHER, G. A. The appraiser reporting that the merchandise should have been returned as needlecases under paragraph 135, the protest was sustained.

No. 44721.—Protest 940854 of G. Hirsch's Sons (New York).

METAL-THREAD RIBBONS.—Merchandise classified as trimmings at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable as ribbons made of metal threads at 40 per cent under paragraph 150.

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Opinion by FISCHER, G. A. On the authority of Siegman *v.* United States (7 Ct. Cust. Appls. 195; T. D. 36506) the metal-thread ribbons in question were held dutiable under paragraph 150 as claimed.

No. 44722.—Protest 940830 of Wm. A. Brown & Co. (New York).

COINS, CHINESE BRASS.—Brass coins classified as articles of brass at 20 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed to be free of duty under paragraph 458 which provides for "coins of gold, silver, copper, or other metal."

Opinion by FISCHER, G. A. The testimony showing that the coins in question constitute genuine money used in China before, and even since that country became a republic, the claim for free entry under paragraph 458 was sustained.

No. 44723.—Protest 940361 of American Express Co. (New York).

SNAP FASTENERS.—Black metal snap fasteners classified as metal articles plated with silver at 50 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed dutiable under the provision for snap fasteners in paragraph 151, tariff act of 1913, at 15 per cent ad valorem, or as manufactures of metal not plated at only 20 per cent under paragraph 167.

Opinion by FISCHER, G. A. The provision for snap fasteners in paragraph 151 being limited to such as are made wholly or in chief value of iron or steel, and the present record not disclosing the metal of which these fasteners are made, they were held dutiable at 20 per cent under paragraph 167.

BEFORE BOARD 3, JANUARY 24, 1922.

No. 44724.—Protest 941317 of Bolte & Bros. (New York).

SHORTAGE.—It is claimed here that duty should not have been assessed on certain automobile parts alleged to have been short landed.

Opinion by ADAMSON, G. A. The parts in question being large and heavy the merchandise was examined on the dock and the appraiser reported short the articles as claimed by the importer. The protest was therefore sustained.

No. 44725.—Protest 940960 of Meadows, Wye & Co. (New York).

WEIGHT OF BOOKS.—Certain books reported and assessed as weighing net 2.5 ounces each are claimed to weigh only 1.54 ounces each.

Opinion by ADAMSON, G. A. The report of a reweighing showing the net weight of the books to be 1.58 ounces each, the protest was sustained to that extent.

No. 44726.—Protest 939943 of Lindt Chocolate Co. (New York).

SHORTAGE.—On the ground of short shipment the importer in this case claims relief from the assessment of duty.

Opinion by ADAMSON, G. A. Certain candy was invoiced and charged at a fixed price per half dozen tins, while the evidence clearly shows that the unit price was applicable to a dozen tins, so that the importer was charged twice as much in the extension as he should have been, and the seller has admitted his mistake in price and refunded one-half of the price charged on those items. The entry, however, was made according to the invoice value and was appraised accordingly. All the merchandise arrived that was described in the invoice. Therefore the protest was overruled, although it is clear a mistake was made that was damaging to the importer.

BEFORE BOARD 3, JANUARY 25, 1922.

No. 44727.—Protest 940287 of G. W. Sheldon & Co. (New York).

SHORTAGE.—An allowance in duty is claimed on 229 safety razors alleged to have been found short.

Opinion by ADAMSON, G. A. The appraiser examined the package at the appraiser's stores and the shortage claimed was noted, with the opinion that it was due to robbery

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and the statement that the package was not corded and sealed, but no opinion was expressed as to when and where the robbery occurred. There is no proof that the items found short were really landed in the United States. From the record it was found that there was a nonimportation and the protest was accordingly sustained.

No. 44728.—Protest 940256 of Achille Starace & Co., Inc. (New York).

EXCESS—LAMBSKINS.—A thousand dozen lambskins were ordered and invoiced and objection is made to the assessment of duty on an excess reported by the appraiser.

Opinion by ADAMSON, G. A. The protest alleges that a dozen lambskins under the contract of purchase meant a dozen skins that would make 3 pairs of gloves to the skin, and the evidence proved that the custom of trade was that, when a skin would not make the number of pairs of gloves required, enough additional skins were always put in to make the whole average up, and, although the invoice specifically states a thousand dozen skins it meant skins enough to make 3,000 pairs of gloves. The protest was therefore sustained.

No. 44729.—Protest 939415 of Paul Kurtze (New York).

SHORTAGE.—A refund of duty is claimed in this case on merchandise alleged not to have been imported, or lost in the custody of the Government.

Opinion by ADAMSON, G. A. From the evidence it was found that the merchandise was landed in apparent good order, and that in the night a hole was cut in the floor of the pier and the merchandise stolen from the boxes, which were afterwards found empty. As duty attaches to foreign merchandise when it arrives within the jurisdiction of our laws, nothing but an act of Congress can authorize relief from that duty. Congress has authorized the remission of duties in some particular cases, but no authority has been found applicable to circumstances like those in this case. It was held that the fact that the merchandise was on the pier and had never been delivered to the importer does not change the rule as to the liability for duty, and the protest was overruled.

No. 44730.—Protests 939339, etc., of Maurice O'Meara Co. (Boston and New York).

PAPER STOCK—WASTE.—Secondhand army hammocks invoiced as old washed canvas, classified as waste at 10 per cent ad valorem under paragraph 384, tariff act of 1913, are claimed free of duty as paper stock under paragraph 566.

Opinion by ADAMSON, G. A. It was found that the waste in question is chiefly used for paper making. Therefore the claim for free admission under paragraph 566 was sustained.

No. 44731.—Protest 941198 of Kirby, Block & Fischer (New York).

SHORTAGE.—A refund of duty is claimed here on certain perfumery on the ground that the bottles were broken and the contents destroyed in transit.

Opinion by ADAMSON, G. A. From the evidence it was found that 63 bottles were broken and the contents entirely lost in transit, and the protest was sustained accordingly.

BEFORE BOARD 1, JANUARY 27, 1922.

No. 44732.—Protest 940499 of the Milwaukee Coke & Gas Co. (Milwaukee).

NAPHTHALENE.—Naphthalene classified at 2½ cents per pound and 15 per cent ad valorem under sections 500 and 501, act of 1916, is claimed free of duty under Group 1, section 500.

Opinion by BROWN, G. A. The solidifying point of this naphthalene being under 79 degrees centigrade, the claim for free admission under Group 1, section 500, was sustained.

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REHEARINGS GRANTED.

DECEMBER 15, 1921.

No. 44733.—RUGS.—Protest 941346 of Franklin Simon & Co., decided November 21, 1921, and not reported.

JANUARY 6, 1922.

No. 44734.—SCRAP METAL.—Protests 938224, etc., of Central Vermont Railway Co., decided November 21, 1921. Not reported.

JANUARY 19, 1922.

No. 44735.—TELEPHONE POLES.—Protests 935109, etc., of United Railways Customs Bureau, decided December 8, 1921. Not reported.

JANUARY 26, 1922.

No. 44736.—RUGS.—Protest 940855 of J. J. Gavin & Co. Abstract 44675.

BEFORE BOARD 1, JANUARY 31, 1922.

No. 44737.—Protest 939630 of Schrenk & Co. (New York).

PLATE GLASS FOR SCALES—MANUFACTURES OF GLASS.—The merchandise in question, consisting of an oval piece of heavy plate glass with beveled edges, about 13¼ inches wide, 16½ inches long, and one-half inch thick, classified as a manufacture of glass at 30 per cent ad valorem under paragraph 95, tariff act of 1913, is claimed dutiable under paragraph 85, 86, 87, or 88, with or without the additional duty provided for in paragraphs 89 and 90.

Opinion by SULLIVAN, G. A. The glass in question was designed and made for computing scale platforms and is beveled to remove the sharp edges of the glass. It is cut to a particular size for a particular purpose and in its imported condition is ready for use. It was therefore held to be dutiable as a manufacture of glass under paragraph 95, as classified. G. A. 8478 (T. D. 38910) and United States *v.* Bache (7 Ct. Cust. Appls. 445; T. D. 37011) cited.

No. 44738.—Protest 939683 of J. A. Knorr (New York).

PHOTOGRAPHIC NEGATIVE GLASS—MANUFACTURES OF GLASS.—Rectangular pieces of ordinary glass, 4 inches by 3¼ inches, and about one-sixteenth inch thick, classified as manufactures of glass at 30 per cent ad valorem under paragraph 95, tariff act of 1913, are claimed dutiable as window glass at seven-eighths of 1 cent per pound under paragraph 85.

Opinion by SULLIVAN, G. A. It was found that the glass in question is cut to dimensions to fit into a new automatic machine, and this cutting to dimensions was held to convert it into a manufacture of glass, even though it is necessary to coat it for use as negative glass. The classification under paragraph 95 was affirmed. G. A. 8478 (T. D. 38910), United States *v.* Bache (7 Ct. Cust. Appls. 445; T. D. 37011), and United States *v.* Schrenk (7 Ct. Cust. Appls. 451; T. D. 37013) followed.

BEFORE BOARD 2, JANUARY 31, 1922.

No. 44739.—Protests 940330, etc., of Hydeman & Lassner (New York).

LACE WEARING APPAREL—SILK SCARFS.—The appraiser reports that the merchandise consists of scarfs composed of silk in imitation of lace. Duty was assessed at 60 per cent ad valorem under paragraph 358, tariff act of 1913, and the importers claim that the scarfs are properly dutiable as silk wearing apparel at 50 per cent under paragraph 317.

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Opinion by HOWELL, G. A. The scarfs in question were held properly classified as lace wearing apparel under paragraph 358 on the authority of G. A. 7947 (T. D. 36596). Jaeger *v.* United States (11 Ct. Cust. Appls. —; T. D. 38962) noted.

No. 44740.—Protest 938272 of Stone & Downer Co. (Boston).

LACE WEARING APPAREL—WOOL COATS.—Merchandise invoiced as ladies' wool coats and classified as lace wearing apparel at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable as wool wearing apparel at 35 per cent under paragraph 291.

Opinion by HOWELL, G. A. The articles were found to be ladies' knitted coats or sweaters composed of wool and made in fancy or openwork designs in imitation of lace. On the authority of Abstract 43841, affirmed in Jaeger *v.* United States (11 Ct. Cust. Appls. —; T. D. 38962) they were held properly classified as lace wearing apparel under paragraph 358.

No. 44741.—Protest 938088 of the Vic Hanny Co. (San Francisco).

SILK WEARING APPAREL—HELMETS.—Helmets classified as silk wearing apparel at 50 per cent ad valorem under paragraph 317, tariff act of 1913, are claimed dutiable at a lower rate.

Opinion by HOWELL, G. A. The appraiser reports that the helmets in question are composed of silk, pith, paper, cotton, and leather, silk being the component material of chief value. As there is no other information as to the character of the goods in the record, they were held properly classified under paragraph 317.

No. 44742.—Protest 939197 of Mother M. Lucy (Cleveland).

SILK FABRICS.—Woven fabrics of silk and cotton were classified as silk chief value at 45 per cent ad valorem under paragraph 318, tariff act of 1913, and are claimed to be composed chiefly of cotton, dutiable under paragraph 254, 266, or 263.

Opinion by HOWELL, G. A. The record showing that the goods are composed in chief value of silk, they were held dutiable as assessed under paragraph 318.

No. 44743.—Protest 938079 of Close & Stewart (Seattle).

SILK TIES.—So-called Irish poplin ties composed of silk and wool, classified as silk wearing apparel at 50 per cent ad valorem under paragraph 317, tariff act of 1913, are claimed to be dutiable at 35 per cent under paragraph 291 as wool chief value.

Opinion by HOWELL, G. A. From the record it was found that the ties in question are composed chiefly of silk. They were therefore held properly classified under paragraph 317.

No. 44744.—Protest 929960 of Southern Pacific Co. (San Francisco).

SILK WASTE.—Merchandise invoiced as waste silk and classified as silk noils at 20 cents per pound under paragraph 311, tariff act of 1913, is claimed free of duty as silk waste under paragraph 599.

Opinion by HOWELL, G. A. On the record it appears that the merchandise is substantially similar to that considered in G. A. 8406 (T. D. 38607) and is silk waste that has been subjected to a washing or boiling process which has removed a part or all of the natural gum in the silk, as well as any impurities. Therefore, following Smillie *v.* United States (11 Ct. Cust. Appls. —; T. D. 38966), the board held the merchandise in question free of duty as silk waste under paragraph 599.

BEFORE BOARD 1, FEBRUARY 2, 1922.

No. 44745.—Protest 940363 of Makris & Milionis (New York).

PEANUT OIL.—A commodity invoiced as vegetable oil was classified as peanut oil at 6 cents per gallon under paragraph 45, tariff act of 1913, and is claimed free of duty as oil used in soap making under the provisions of paragraph 498.

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Opinion by McClelland, G. A. An analysis of a sample shows it to be "ra cid arachis oil" and the chemist stated that it contained over 20 per cent of acid and could not be used as a salad oil for edible purposes. It appears that it was bought to be used in making soap and was subsequently sold to soap manufacturers. Therefore, notwithstanding the fact that it is peanut oil, it was held entitled to free admission under paragraph 498.

No. 44746.—Protests 939407, etc., of the H. & S. Pogue Co. (Cleveland).

Rugs.—Chenille rugs classified at 50 per cent ad valorem under paragraph 300, tariff act of 1913, are claimed dutiable at 35 per cent under paragraphs 293 and 303.

Opinion by Brown, G. A. On the authority of Abstract 44262 relating to similar merchandise the rugs in question were held dutiable under paragraph 293 as claimed.

No. 44747.—Protests 940908, etc., of J. J. Gavin & Co. et al. (New York), and protests 939225, etc., of John Wanamaker (Philadelphia).

Rugs.—Rugs made from Axminster or chenille carpeting are claimed dutiable at 35 per cent ad valorem under paragraphs 293 and 303, tariff act of 1913.

Opinions by Brown, G. A. On the authority of United States *v.* Trorlicht (10 Ct. Cust. Appls. 254; T. D. 38618) the rugs in question were held dutiable under paragraph 293 as claimed.

No. 44748.—Protest 941074 of Milbank Leaman & Co. (New York).

Flannels.—Merchandise classified at 35 per cent ad valorem under paragraph 288, tariff act of 1913, is claimed dutiable as flannels at 30 per cent under paragraph 289.

Opinion by Brown, G. A. On the authority of Connor *v.* United States (9 Ct. Cust. Appls. 312; T. D. 38241) the claim under paragraph 289 was sustained as to certain items found to be dutiable as flannels.

Before Board 2, February 2, 1922.

No. 44749.—Protest 937687 of O. G. Hempstead & Son (Philadelphia).

Wood Pulp Mechanically Ground.—Merchandise invoiced as white wood-pulp boards was classified as common paper-box board at 5 per cent ad valorem under paragraph 320, and is claimed entitled to free entry as mechanically ground wood pulp under paragraph 649.

Opinion by Fischer, G. A. On the authority of Abstract 44575 relating to similar merchandise the claim for free admission under paragraph 649 was sustained.

Before Board 3, February 2, 1922.

No. 44750.—Protest 942130 of Fredk. Loeser & Co. (New York).

Shortage.—Refund is claimed here of duty collected on certain articles found short upon examination.

Opinion by Adamson, G. A. It appears that the case in question was received in bad order by the landing inspector and the examiner reported a shortage. Being satisfied from the record that the goods were extracted before the case arrived within the jurisdiction of our customs laws, the board sustained the protest.

Before Board 1, February 7, 1922.

No. 44751.—Protests 934128, etc., of F. W. Myers & Co. et al. (Detroit).

Cork Waste.—The question here is whether the commodity is dutiable at 30 per cent ad valorem under paragraph 340, tariff act of 1913, or free of duty as cork waste under paragraph 464.

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Opinion by McCLELLAND, G. A. On the authority of G. A. 8433 (T. D. 38717) the claim for free entry as cork waste under paragraph 464 was sustained.

No. 44752.—Protest 937642 of Wa Sang Lung & Co. (San Francisco).

CELLULOID BEAD NECKLACES.—Finished necklaces composed of celluloid beads, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 333.

Opinion by SULLIVAN, G. A. On the amended return of the appraiser celluloid bead necklaces were held dutiable as beaded articles under paragraph 333. Abstracts 43341 and 44230 followed.

No. 44753.—Protest 936566 of American Bead Co. (New York).

AMBER BEADS—AMBER NECKLACE CLASPS.—Certain amber beads and necklace clasps are claimed dutiable at 20 per cent ad valorem under paragraph 357, tariff act of 1913, rather than as jewelry at 60 per cent under paragraph 356.

Opinion by SULLIVAN, G. A. The amber beads and necklace clasps were held dutiable at 20 per cent under paragraph 357 as claimed.

BEFORE BOARD 3, FEBRUARY 7, 1922.

No. 44754.—Protest 942268 of Alex. D. Shaw & Co. (New York).

WAR TAX ON LIQUOR.—This protest is against the assessment of additional duty on certain whiskey at $2.20 per proof gallon under paragraph 600 of the revenue act of 1918.

Opinion by ADAMSON, G. A. On the authority of G. A. 8435 (T. D. 38719), affirmed in Shaw *v.* United States (11 Ct. Cust. Appls. —; T. D. 38990), the protest was overruled.

No. 44755.—Protest 942344 of Belfast Linen Handkerchief Co. (New York).

HANDKERCHIEFS—SUFFICIENCY OF PROTEST.—The appraiser classified certain handkerchiefs at 40 per cent ad valorem under paragraph 282, tariff act of 1913, but in a supplemental report states that they should have been returned at 30 per cent under paragraph 255. Another lot which he classified at 60 per cent under paragraph 358 he reports is dutiable at 40 per cent under paragraph 282. The collector called attention to a misnumbering of a paragraph in the protest.

Opinion by ADAMSON, G. A. It was held that the context and other description in the protest itself and the other papers in the case clearly indicating the law under which relief is sought the relief should be granted and the protest was sustained.

BEFORE BOARD 1, FEBRUARY 9, 1922.

No. 44756.—Protest 939671 of John Wanamaker (New York).

FEATHERS.—White goose feathers which have been split, classified at 40 per cent ad valorem, are claimed dutiable at only 30 per cent under the provisions of paragraph 347.

Opinion by McCLELLAND, G. A. On the authority of Abstract 44558 and United States *v.* Massce (9 Ct. Cust. Appls. 256; T. D. 38214), the goose feathers in question were held dutiable at 30 per cent under paragraph 347.

No. 44757.—Protests 940422, etc., of B. Illfelder & Co. et al. (New York).

MAGNETS—TOYS.—Small magnets classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. Magnets capable of use for a practical purpose and furnished to a high school as part of the school equipment were held not to be toys within the definition in Illfelder *v.* United States (1 Ct. Cust. Appls. 111; T. D. 31115) and the claim under paragraph 167 was sustained.

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No. 44758.—Protest 938518 of Lewy & Cohen (New York).

BEADS LOOSELY STRUNG.—Certain beads classified at 50 per cent ad valorem are claimed dutiable at only 35 per cent under the provisions of paragraph 333, tariff act of 1913.

Opinion by SULLIVAN, G. A. On stipulation of counsel that the beads in question were loosely strung for facility in transportation they were held dutiable at 35 per cent under paragraph 333.

No. 44759.—Protest 942445 of Kuttroff, Pickhardt & Co., Inc. (New York).

HYDROSULPHITE OF SODA.—The appraiser reports that the merchandise in question is hydrosulphite of soda. It was classified as a chemical compound at 15 per cent ad valorem under paragraph 5, tariff act of 1913, and is claimed dutiable at one-fourth per cent per pound under paragraph 67.

Opinion by BROWN, G. A. Paragraph 67 provides for "hyposulphite of soda" at the rate claimed in the protest, but does not mention *hydrosulphite* of soda. On the record the protest was overruled.

BEFORE BOARD 2, FEBRUARY 9, 1922.

No. 44760.—Protest 939916 of F. L. Kraemer & Co. (New York).

COPPER FOIL—COPPER IN STRIPS.—Copper foil in strips 1 inch wide and .003 of an inch thick, classified as a manufacture of metal at 20 per cent ad valorem under paragraph 167, tariff act of 1913, is claimed properly dutiable as copper in strips at 5 per cent under paragraph 147.

Opinion by FISCHER, G. A. The appraiser concedes that the copper foil in question is in the form of strips. It was therefore held dutiable as claimed under paragraph 147. Abstract 44348 followed.

BEFORE BOARD 3, FEBRUARY 9, 1922.

No. 44761.—Protest 940848 of Union Paint Co. (New York).

PAINT IN DRUMS.—This protest is against the assessment of duty on certain drums which were imported filled with paint.

Opinion by WAITE, G. A. The drums in question were treated as unusual containers and assessed separately. The record revealing no reason for changing that assessment, the protest was overruled.

BEFORE BOARD 1, FEBRUARY 14, 1922.

No. 44762.—Protests 941391, etc., of Rutherford S. Finch (St. Paul).

METAL POCKET PENCILS.—Metal pocket pencils, some with and others without clips, with an advertisement stamped on each pencil, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 20 per cent under paragraph 167, the contention being that these pencils are not dutiable under paragraph 356 because they are novelties for advertising purposes.

Opinion by SULLIVAN, G A. Although some of the pencils are larger than others, none of them is as long as ordinary lead pencils. It was found that they are designed to be carried on the person and therefore are within the provisions of paragraph 356. G. A. 7625 (T. D. 34870), affirmed in Gallagher *v.* United States (6 Ct. Cust. Appls. 105; T. D. 35343), and Hensel *v.* United States (6 Ct. Cust. Appls. 162; T D. 35434) followed. United States *v.* Borgfeldt (7 Ct. Cust. Appls. 367; T. D. 36909) distinguished. Brown, General Appraiser, dissented.

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No. 44763.—Protest 941185 of Nelson Bead Co. (New York).

BEAD AND METAL NECKLACES.—Necklaces composed of graduated greenish beads resembling jade, held together by links of a white metal resembling silver, and with white metal ornaments, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as articles in chief value of beads at 50 per cent under paragraph 333.

Opinion by SULLIVAN, G. A. On the authority of American Bead Co. *v.* United States (7 Ct. Cust. Appls. 18; T. D. 36259) the classification of the necklaces in question as jewelry under paragraph 356 was affirmed. United States *v.* International Forwarding Co. (6 Ct. Cust. Appls. 25; T. D. 35272) cited.

BEFORE BOARD 1, FEBRUARY 16, 1922.

No. 44764.—Protests 938547, etc., of A. W. Fenton, jr. (Cleveland).

WOOD STRIPS FOR CRATES—LUMBER.—Rough sawed strips of wood imported and used for making stove crates, classified as manufactures of wood under paragraph 176 or as packing-box shooks under paragraph 171, tariff act of 1913, at 15 per cent ad valorem, are claimed free of duty as lumber not further manufactured than sawed under paragraph 647.

Opinion by MCCLELLAND, G. A. It appeared that nine pieces of different sizes are required for constructing a crate, but that the importations here involved contained only one of the nine pieces of wood thus used. The claim for free entry under paragraph 647 was sustained. Abstract 40748 noted.

No. 44765.—Protests 934790, etc., of Bloomingdale Bros. et al. and protests 935288, etc., of Pietro de Angeli et al. (New York).

LAMBSKINS—GLOVE LEATHER.—Lambskins classified at 10 per cent ad valorem under paragraph 359, tariff act of 1913, are claimed free of duty under paragraph 530.

Opinions by MCCLELLAND, G. A. Keshishian *v.* United States (11 Ct. Cust. Appls. —; T. D. 38961) followed, holding unfinished lambskins entitled to free entry as leather not specially provided for under paragraph 530.

No. 44766.—Protest 942588 of J. J. Gavin & Co. (New York).

GALALITH BRACELETS.—Galalith bracelets classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 15 per cent under paragraph 385.

Opinion by SULLIVAN, G. A. On the authority of Abstract 44071 galalith bracelets were held dutiable under paragraph 385 as claimed.

No. 44767.—Protest 942160 of Gimbel Bros., protest 941234 of Albert Lorsch & Co., protest 942481 of Nelson Bead Co., and protest 941182 of Saks & Co. (New York).

AMBER BEADS.—Amber beads classified at 35 per cent ad valorem under paragraph 333, tariff act of 1913, are claimed dutiable at 20 per cent under paragraph 357.

Opinions by SULLIVAN, G. A. Amber beads were held dutiable as precious or semiprecious stones, cut but not set, suitable for use in the manufacture of jewelry, at 20 per cent under paragraph 357. G. A. 8469 (T. D. 38883) followed.

BEFORE BOARD 1, FEBRUARY 17, 1922.

No. 44768.—Protest 936991 of Isler & Guye (New York).

STRAW FLOWERS.—Merchandise classified as artificial flowers at 60 per cent ad valorem under paragraph 347, tariff act of 1913, are claimed dutiable as manufactures of straw at 25 per cent under paragraph 368.

Opinion by MCCLELLAND, G. A. On the amended report of the appraiser the flowers in question were held dutiable as manufactures of straw under paragraph 368 as claimed.

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No. 44769.—Protest 940139 of N. Snellenburg & Co. (Philadelphia).

GALALITH ARTICLES.—Bracelets and necklaces composed of galalith and imitation precious stones, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 15 per cent under paragraph 385.

Opinion by SULLIVAN, G. A. The galalith bracelets and necklaces in question were held dutiable under paragraph 385 at 15 per cent. Abstracts 43958 and 44229 followed.

BEFORE BOARD 2, FEBRUARY 17, 1922.

No. 44770.—Protest 937489 of Birn & Wachenheim (New York).

CELLOPHANE IN SHEETS.—Cellophane in sheets classified as yarns, threads, or filaments of artificial silk at 35 per cent ad valorem under paragraph 319, tariff act of 1913, is claimed dutiable as a nonenumerated manufactured article at 15 per cent under paragraph 385.

Opinion by HOWELL, G. A. On the authority of G. A. 8459 (T. D. 38816) cellophane in sheets was held dutiable as a nonenumerated manufactured article under paragraph 385.

BEFORE BOARD 1, FEBRUARY 20, 1922.

No. 44771.—Protest 937772, etc., of Kwong Lee Chong & Co. et al. (San Francisco).

FISH SOUNDS.—It is claimed here that fish sounds are free of duty under paragraph 419, tariff act of 1913.

Opinion by BROWN, G. A. On the authority of United States *v.* Brown (10 Ct. Cust. Appls. 47; T. D. 38295) the fish sounds in question were held entitled to free entry under paragraph 419.

No. 44772.—Protests 943001, etc., of B. Altman & Co. (New York).

RUGS.—Certain rugs are claimed dutiable at 35 per cent under paragraph 293, tariff act of 1913.

Opinion by BROWN, G. A. The rugs in question were held dutiable under paragraph 293 as claimed. United States *v.* Trorlicht (10 Ct. Cust. Appls. 254; T. D. 38618) followed.

BEFORE BOARD 3, FEBRUARY 20, 1922.

No. 44773.—Protest 942255 of F. N. Giavi (New York).

SHORTAGE.—An allowance in duty is claimed on 4 cases of anchovies reported short by the discharging inspector.

Opinion by ADAMSON, G. A. The evidence supporting the claim, the protest was sustained.

No. 44774.—Protest 941506 of Midland Linseed Products Co. (New York).

SHORTAGE.—It is claimed here that duty should not have been assessed on 1,257 bags of screenings which the discharging inspector reported were not found.

Opinion by ADAMSON, G. A. On the proof furnished at the hearing the protest was sustained.

No. 44775.—Protest 940934 of Geo. S. Bush & Co., Inc. (Seattle).

SHORTAGE.—An allowance in duty is claimed on one piece of pongee silk on the ground that it was not imported.

Opinion by ADAMSON, G. A. The invoice specified that the case contained 30 pieces of silk, but the evidence showed that only 29 pieces were imported. The protest was therefore sustained.

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BEFORE BOARD 1, FEBRUARY 23, 1922.

No. 44776.—Protest 941615 of Abraham & Strauss (New York).

WRIST WATCHES.—The merchandise consists of wrist watches with bracelets of leather with gold or silver buckles. The movements were classified at 30 per cent ad valorem under paragraph 161, tariff act of 1913, and the bracelets and cases were classified as jewelry at 60 per cent under pragraph 356. They are claimed dutiable at 50 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. The appraiser reports that the bracelets would now be returned as manufactures of gold or silver at 50 per cent under paragraph 167 and the cases at 30 per cent under paragraph 161. As the latter claim was not made in the protest, it was sustained as to the bracelets only, which were held dutiable at 50 per cent under paragraph 167.

No. 44777.—Protest 937532 of Sing Chong Co. (San Francisco).

BEADS—BONE CHARMS.—Necklaces of heavy reddish stone beads about the size of marbles, loosely strung on cheap white cotton cord, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as beads loosely strung at 35 per cent under paragraph 333. Bone charms, also classified as jewelry under paragraph 356, are claimed dutiable as manufactures of bone at 20 per cent under paragraph 368.

Opinion by SULLIVAN, G. A. On the authority of Amercan Bead Co. *v.* United States (7 Ct. Cust. Appls. 18; T. D. 36259) the stone bead necklaces were held dutiable as beads loosely strung under paragraph 333 as claimed. The bone charms were held dutiable as manufactures of bone under paragraph 368. United States *v.* Mandel (10 Ct. Cust. Appls. 44; T. D. 38294) cited.

No. 44778.—Protest 942440 of Iona Sales Co. (New York).

MICROSCOPE SLIDES.—Microscope slides classified as manufactures of glass at 30 per cent ad valorem under paragraph 95, tariff act of 1913, are claimed dutiable as mountings for microscopes at 25 per cent under paragraph 94.

Opinion by SULLIVAN, G. A. On the amended return of the appraiser the microscope slides in question were held dutiable at 25 per cent under paragraph 94.

No. 44779.—Protest 942009 of Stern Bros. (New York).

APPORTIONMENT OF VALUE.—It is claimed in this protest that duty was assessed at 60 per cent on too great an apportionment of value for certain wrist watches and that a greater sum should have been allowed for the value of the movements upon which to apply duty at 30 per cent under paragraph 161.

Opinion by SULLIVAN, G. A. The protest was dismissed for the reason that the question raised was entirely one of value.

No. 44780.—Protest 941782 of Gallagher & Ascher (New York).

THERMOMETERS.—It was stipulated that the thermometers in question are composed of wood, blown glass, and metal, metal chief value, erroneously classified under paragraph 84, tariff act of 1913, as articles in chief value of blown glass at 45 per cent ad valorem. They are claimed dutiable at 15 per cent under paragraph 176 or at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. There was nothing in the case but the sample to indicate under which provision of paragraph 167 the thermometers are dutiable, the stipulation not showing whether the metal is nickel or whether it is silver plated. As the protest claimed the 20 per cent rate under paragraph 167, on the theory that the Government conceded metal to be chief value knowing that that was the only rate claimed, the protest was sustained.

No. 44781.—Protests 942851, etc., of Lippmann, Spier & Hahn et al., protests 941344 and 942583 of D. Lisner & Co., protest 941009 of Samstag & Hilder Bros., and protest 942625 of S. Stern (New York).

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AMBER ARTICLES.—Amber beads and clasps classified at 35 per cent ad valorem under paragraph 333, tariff act of 1913, are claimed dutiable at 20 per cent under paragraph 357.

Opinions by SULLIVAN, G. A. On the authority of G. A. 8469 (T. D. 38883) the amber beads and clasps in question were held dutiable at 20 per cent under paragraph 357.

No. 44782.—Protest 943337 of Syndicate Trading Co. (New York).

RUGS.—Rugs classified at 50 per cent ad valorem under paragraph 300, tariff act of 1913, are claimed dutiable at 35 per cent under paragraph 293.

Opinion by BROWN, G. A. United States *v.* Trorlicht (10 Ct. Cust. Appls. 254; T. D. 38618) followed as to rugs.

No. 44783.—Protest 943288 of Wm. A. Brown & Co. (New York).

COLORING.—A commodity classified as coloring for brandy, etc., at 40 per cent ad valorem under paragraph 26, tariff act of 1913, is claimed dutiable as vegetable coloring at ⅜ of one cent per pound under paragraph 30.

Opinion by BROWN, G. A. On the authority of Abstract 44259 relating to similar merchandise the coloring in question was held dutiable under paragraph 30 as claimed.

No. 44784.—Protest 941651 of Textile Alliance, Inc. (New York).

ALIZARIN DYES.—A commodity classified as coal tar colors at 30 per cent ad valorem and 5 cents a pound under the act of September 8, 1916, is claimed dutiable at 30 per cent ad valorem under paragraph 20, tariff act of 1913.

Opinion by BROWN, G. A. Colors found on analysis to be dyes derived from alizarin were held dutiable under paragraph 20 as claimed.

BEFORE BOARD 1, FEBRUARY 24, 1922.

No. 44785.—Protests 939128, etc., of American Bead Co. et al., protest 937360 of Ignaz Strauss & Co., and protest 939914 of John Wanamaker (New York).

AMBER BEADS.—Amber beads classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, or as beads at 35 per cent under paragraph 333, are claimed dutiable as precious or semiprecious stones suitable for use in the manufacture of jewelry at 20 per cent under paragraph 357.

Opinions by SULLIVAN, G. A. G. A. 8469 (T. D. 38883) followed, holding amber beads dutiable under paragraph 357 as claimed.

No. 44786.—Protest 940722 of U. S. Forwarding Co. (New York).

RUGS.—Chenille rugs are claimed dutiable under paragraph 293, tariff act of 1913, at 35 per cent ad valorem.

Opinion by BROWN, G. A. On the authority of United States *v.* Trorlicht (10 Ct. Cust. Appls. 254; T. D. 38618) the chenille rugs in question were held dutiable under paragraph 293 as claimed.

No. 44787.—Protests 942364, etc., of R. Connor et al. (New York).

FLANNELS.—Merchandise classified as wool cloth at 35 per cent ad valorem under paragraph 288, tariff act of 1913, is claimed dutiable as flannels at 30 per cent under paragraph 289.

Opinion by BROWN, G. A. The protests were sustained on the authority of Connor *v.* United States (9 Ct. Cust. Appls. 312; T. D. 38241).

BEFORE BOARD 1, FEBRUARY 27, 1922.

No. 44788.—Protests 935940, etc., and 942396, etc., of American Express Co. et al., protests 934638, etc., of Louis A. Consmiller et al., protests 943105, etc., of the Elite Glove Co. et al., protests 934620, etc., of the General Hide and Skin Corporation, protests 935592, etc., of Leopold Karch et al., and protests 939031, etc., of Mills & Gibb Corporation et al. (New York).

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LAMBSKINS, ALUM-TANNED—GLOVE LEATHER.—Alum-tanned lambskins classified at 10 per cent ad valorem under paragraph 359, tariff act of 1913, are claimed free of duty as leather not specially provided for under paragraph 530.

Opinions by McCLELLAND, G. A. Keshishian *v.* United States (11 Ct. Cust. Appls. —; T. D. 38961) followed, holding alum-tanned lambskins not to be dutiable as glove leather under paragraph 359, but free of duty under paragraph 530.

No. 44789.—Protest 943245 of R. H. Macy & Co. (New York).

RUGS.—Rugs made from chenille carpeting classified at 50 per cent ad valorem under paragraph 300, tariff act of 1913, are claimed dutiable at 35 per cent under paragraph 293.

Opinion by BROWN, G. A. On the authority of United States *v.* Trorlicht (10 Ct. Cust. Appls., 254; T. D. 38618) rugs made from chenille carpeting were held dutiable under paragraph 293 as claimed. Spool Axminister rugs were held properly classified at 50 per cent under paragraph 300. United States *v.* Gertzen (8 Ct. Cust. Appls. 428; T. D. 37668) followed.

BEFORE BOARD 2, FEBRUARY 27, 1922.

No. 44790.—Protest 940946 of Isler & Guye (New York).

MANILA HEMP BRAIDS.—Hat braids classified as composed in chief value of artificial silk at 60 per cent ad valorem under paragraph 319, tariff act of 1913, are claimed to be composed in chief value of manila hemp, dutiable under paragraph 335.

Opinion by HOWELL, G. A. The braids in question, which were found to be composed in chief value of manila hemp, dyed, were held dutiable at 20 per cent under paragraph 335.

No. 44791.—Protests 934945, etc., of S. Heim & Sons et al. (New York).

LACE SHAWLS AND SCARFS—WOOL WEARING APPAREL.—Wool shawls and scarfs classified as lace wearing apparel at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as wool wearing apparel at 35 per cent under paragraph 291.

Opinion by HOWELL, G. A. On the authority of Abstract 43841, affirmed in Jaeger *v.* United States (11 Ct. Cust. Appls. —; T. D. 38962), holding the provision for lace wearing apparel in paragraph 358 to be more specific than the provision for shawls composed of wool in paragraph 291, the protests were overruled.

BEFORE BOARD 1, MARCH 1, 1922.

No. 44792.—Protest 936447 of M. J. Corbett & Co. (New York).

AMBER BEADS AND CLASPS.—Amber beads and clasps classified at 50 per cent ad valorem under paragraph 333, tariff act of 1913, are claimed dutiable as precious or semiprecious stones suitable for use in the manufacture of jewelry at 20 per cent under paragraph 357.

Opinion by SULLIVAN, G. A. On the authority of G. A. 8469 (T. D. 38883) the amber beads and clasps in question were held dutiable under paragraph 357 as claimed.

No. 44798.—Protest 941875 of Lippmann, Spier & Hahn (New York).

AMBER BEADS.—The appraiser reports that the merchandise consists of real amber beads loosely strung. They were classified at 35 per cent ad valorem under paragraph 333, tariff act of 1913, and are claimed dutiable at 10 per cent under paragraph 367 or at 20 per cent under paragraph 357.

Opinion by SULLIVAN, G. A. Amber beads loosely strung were held dutiable at 20 per cent under paragraph 357. G. A. 8469 (T. D. 38883) followed.

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No. 44794.—Protest 942643 of the Bertrose Co. (New York).

GALALITH BRACELETS.—Bracelets composed of galalith, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 15 per cent under paragraph 385.

Opinion by SULLIVAN, G. A. In view of Abstract 44071 the galalith bracelets in question were held dutiable under paragraph 385 as claimed.

No. 44795.—Protests 943023, etc., of Wm. E. Flory & Co. et al. (New York).

GALALITH ARTICLES.—Galalith pendants, bracelets, and belts, not beaded, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 15 per cent under paragraph 385.

Opinion by SULLIVAN, G. A. From the amended report of the appraiser and in accordance with Abstract 43958 the galalith articles in question were held dutiable under paragraph 385.

No. 44796.—Protest 942921 of Stern Bros. (New York).

IVORY BRACELETS—SICOID BRACELETS.—Ivory bracelets and sicoid bracelets classified as jewelry under paragraph 356, tariff act of 1913, are claimed dutiable at 35 per cent under paragraph 369, and at 15 per cent under paragraph 385, respectively.

Opinion by SULLIVAN, G. A. On the authority of United States *v.* Darling (10 Ct. Cust. Appls. 57; T. D. 38334), affirming G. A. 8222 (T. D. 37869), the ivory bracelets in question were held dutiable as manufactures of ivory under paragraph 369. Merchandise described as sicoid bracelets, composed of galalith, was held dutiable under paragraph 385 as claimed. Abstract 44071 followed.

REHEARING GRANTED.

FEBRUARY 17, 1922.

No. 44797.—EMBROIDERED ARTICLES.—Protest 941428 of Lord & Taylor, decided January 12, 1922. Not reported.

BEFORE BOARD 1, MARCH 6, 1922.

No. 44798.—Protest 940211 of Nelson Bead Co. (New York).

BEADS LOOSELY STRUNG.—Beads loosely strung for facility in transportation only, classified at 50 per cent ad valorem. are claimed dutiable at only 35 per cent under the provisions of paragraph 333, tariff act of 1913.

Opinion by SULLIVAN, G. A. On stipulation of counsel that the beads in question were erroneously returned, they were held dutiable at 35 per cent under paragraph 333 as claimed.

No. 44799.—Protest 943072 of D. Lisner Co. (New York).

IVORY BEAD NECK CHAINS.—Neck chains composed of ivory beads with ivory clasps, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as beaded articles at 50 per cent under paragraph 333.

Opinion by SULLIVAN, G. A. On the authority of United States *v.* Darling (10 Ct. Cust. Appls. 57; T. D. 38334), affirming G. A. 8222 (T. D. 37869), neck chains composed of ivory beads and clasps were held dutiable as beaded articles under paragraph 333.

BEFORE BOARD 1, MARCH 8, 1922.

No. 44800.—Protest 939519 of J. W. Robinson Co. (Los Angeles).

METAL POCKET FLASKS.—The merchandise in question is metal pocket flasks, some of nickel and others silver plated, partly covered with leather. They were classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, and are claimed dutiable at the appropriate rate under paragraph 167.

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Opinion by SULLIVAN, G. A. The flasks in question were held dutiable under paragraph 167. Abstract 39745 followed.

No. 44801.—Protest 941186 of Nelson Bead Co. (New York).

IMITATION PRECIOUS STONES.—Imitation precious stones, jewels, cabachons, or similar merchandise are claimed dutiable as manufactures of glass or paste at 30 per cent ad valorem under paragraph 95, tariff act of 1913, rather than at 35 per cent under paragraph 333, as classified.

Opinion by SULLIVAN, G. A. Imitation precious stones not principally used for jewelry, similar to that passed upon in Abstract 44108, were held dutiable as manufactures of glass or paste under paragraph 95.

No. 44802.—Protest 942503 of Wm. A. Brown & Co. (New York).

COLORED GLASS BRACELETS.—Bracelets composed of colored glass classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as articles of colored glass at 45 per cent under paragraph 84.

Opinion by SULLIVAN, G. A. On the amended report of the appraiser the bracelets in question were held dutiable as articles of colored glass under paragraph 84. Abstract 42366 followed.

BEFORE BOARD 3, MARCH 8, 1922.

No. 44803.—Protest 938147 of the Dayton Co. (Minneapolis).

SHORTAGE.—An allowance for shortage reported by the appraiser is claimed in this case.

Opinion by ADAMSON, G. A. It appeared that the steamship company partially paid the importer for the missing items as though lost on the ship. The examiner found certain items short and so returned on the invoice, suggesting robbery, but there is no evidence to show where the robbery occurred nor what was the extent of it. In view of the provisions of section 2921 of the Revised Statutes the shortage reported by the appraiser was allowed.

No. 44804.—Protest 938385 of Parmelee Dohrmann Co. (Los Angeles).

CLERICAL ERROR—DURESS.—It is claimed here that entry at too high a value was made through clerical error. It is also claimed the entry was made under duress.

Opinion by ADAMSON, G. A. The difference involved is the difference in the way of calculating the per cent of differential between the invoice export value and the home market value in Germany. No manifest clerical error was discovered nor any duress. The entry was made as the party making it had determined and intended to make it. The protest was therefore overruled.

BEFORE BOARD 1, MARCH 13, 1922.

No. 44805.—Protest 943583 of F. W. Woolworth Co. (New York).

ALUMINUM UTENSILS.—Dishes, teapots, kettles, and other articles composed of aluminum classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as utensils of aluminum at 25 per cent under paragraph 134.

Opinion by SULLIVAN, G. A. The claim was sustained as to certain items which were held dutiable under paragraph 134.

No. 44806.—Protest 944167 of Alex. D. Shaw & Co. (New York).

GLASS BOTTLES.—Glass bottles containing whisky classified as decorated at 45 per cent ad valorem under paragraph 84, tariff act of 1913, are claimed to be plain glass dutiable at only 30 per cent under paragraph 83.

Opinion by SULLIVAN, G. A. The bottles in question were found to be of plain glass and the claim under paragraph 83 was sustained.

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No. 44807.—Protest 944256 of Lord & Taylor (New York).

IVORY PENDANTS.—Ivory pendants classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as manufactures of ivory at 35 per cent under paragraph 369.

Opinion by SULLIVAN, G. A. On the amended report of the appraiser the ivory pendants in question were held dutiable under paragraph 369 as claimed.

No. 44808.—Protest 944259 of Eimer & Amend (New York).

MICROSCOPE SLIDES AND COVER GLASSES.—Microscope slides and cover glasses were classified as manufactures of glass at 30 per cent ad valorem under paragraph 95, tariff act of 1913, and are claimed dutiable at 20 per cent under paragraph 94.

Opinion by SULLIVAN, G. A. The slides and cover glasses in question were held dutiable as mountings for microscopes under paragraph 94. G. A. 8431 (T. D. 38714) followed.

BEFORE BOARD 3, MARCH 13, 1922.

No. 44809.—Protest 936875 of H. G. Chandler (Ogdensburg).

CURRENCY VALUE.—The question here relates to the rate of depreciation of Canadian currency. The importer states in his protest that he made application to the consul for a certificate (Form 144-A), and was informed that he had not that form, and entry was made with a notation by the consul upon the invoice.

Opinion by WAITE, G. A. It appeared that the certificate for which application was made was not then in existence or provided for by law and the Secretary of the Treasury declined to recognize the notation by the consul as to the rate of exchange, or to instruct the collector to liquidate at any other value than the proclaimed value of the Canadian currency. The board having no equity jurisdiction was constrained to overrule the protest, even though it recognized the hardship upon the importer, it being a case where he would have been relieved from the payment of duty on the difference between the proclaimed and the exchange value of the Canadian currency if Form 144 had been attached.

BEFORE BOARD 1, MARCH 14, 1922.

No. 44810.—Protest 942925 of Geo. Borgfeldt & Co. (New York).

BEAD NECKLACES—ARTISTS' COLORS.—Necklaces composed of glass beads classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 333. Paints or colors and articles incidental to their use packed in cardboard boxes classified as toys at 35 per cent under paragraph 342, are claimed dutiable as artists' colors at 20 per cent under paragraph 63.

Opinion by SULLIVAN, G. A. On the amended report of the appraiser the necklaces of glass beads were held dutiable as articles in chief value of beads under paragraph 333. G. A. 8241 (T. D. 37954) followed. On the authority of Illfelder *v.* United States (7 Ct. Cust. Appls. 53; T. D. 36311) the paint boxes were held dutiable as artists' colors under paragraph 63.

No. 44811.—Protest 939779 of L. S. Ayres & Co. (Indianapolis).

BEADS LOOSELY STRUNG.—Strings of beads without clasps which were classified as beaded articles at 50 per cent ad valorem are claimed to be dutiable as loosely strung at only 35 per cent under the provisions of paragraph 333.

Opinion by SULLIVAN, G. A. From the evidence it was found that these beads are restrung after importation. In view of Lorsch *v.* United States (8 Ct. Cust. Appls., 246; T. D. 37521) they were held dutiable at only 35 per cent under paragraph 333.

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No. 44812.—Protest 941847 of Aitken Sons & Co. (New York).

YEDDA HOODS.—The question here is whether Yedda hoods are wool chief value, dutiable at 35 per cent ad valorem under paragraph 291, tariff act of 1913, or chiefly of chip or straw, dutiable at 25 per cent under paragraph 335.

Opinion by BROWN, G. A. The report of the analyst indicating that straw braid is the component material of chief value in the Yedda hoods they were held dutiable accordingly under paragraph 335 as claimed.

No. 44813.—Protest 939695 of Bernard Judea & Co. (New York).

WOOL HOSE.—This protest relates to merchandise invoiced as colored embroidered half hose classified as embroidered wearing apparel at 60 per cent ad valorem under paragraph 358, tariff act of 1913, and an item invoiced as fancy half hose which was classified as cotton hose at 60 per cent and is claimed dutiable at 50 per cent under paragraph 260.

Opinion by BROWN, G. A. The first item was found not to be embroidered but clocked, provided for in paragraph 288 at 40 per cent, and the second item was apparently wool also dutiable at the same rate under paragraph 288. As the correct claim was not made the board was constrained to overrule the protest.

No. 44814.—Protests 939236, etc., of Arthur Walker & Co. (New York).

WOOL CLOTH.—Merchandise classified as in chief value of hair of the Angora goat at 40 per cent ad valorem under paragraph 308, tariff act of 1913, is claimed to be wool chief value, dutiable at 35 per cent under paragraph 288 or 290.

Opinion by BROWN, G. A. From the report of the analyst it was found that wool is the component of chief value, and the claim under paragraph 290 was sustained.

No. 44815.—Protests 943604, etc., of E. Stegemann, jr., et al. (New York).

AXMINSTER RUGS.—The appraiser reports that the rugs in question are made from Axminster or chenille carpeting. They were classified at 50 per cent ad valorem under paragraph 300, tariff act of 1913, and are claimed dutiable at 35 per cent under paragraph 293.

Opinion by BROWN, G. A. The rugs in question were held dutiable as Axminster or chenille carpets under paragraph 293. United States *v.* Trorlicht (10 Ct. Cust. Appls. 254; T. D. 38618) followed.

No. 44816.—Protest 937279-62828 of G. W. Sheldon & Co. (Chicago), protest 943486 of H. W. Robinson & Co., and protests 943484, etc., of J. B. Thompson & Co. et al. (New York).

FLANNELS.—Merchandise classified as wool cloth at 35 per cent ad valorem under paragraph 288, tariff act of 1913, is claimed dutiable as flannels at 30 per cent under paragraph 289.

Opinions by BROWN, G. A. On the authority of Connor *v.* United States (9 Ct. Cust. Appls. 312; T. D. 38241) the merchandise in question was held dutiable as flannels under paragraph 289, rather than as wool cloth under paragraph 288.

BEFORE BOARD 3, MARCH 14, 1922.

No. 44817.—Protest 940992 of C. A. Turner, Inc. (Pittsburgh).

SHORTAGE.—It is claimed here that owing to a miscalculation in the invoice the importer was charged with more merchandise than was shipped or received.

Opinion by ADAMSON, G. A. It was clearly shown by the evidence that the importer did not receive all the merchandise on which he paid duty and that the portion found short never left the foreign shipper, the shipper having recognized the mistake and refunded the difference. It was held that the importer's claim for shortage was not vitiated by his showing that it was brought about through a clerical error, and the protest was sustained.

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BEFORE BOARD 1, MARCH 20, 1922.

No. 44818.—Protest 941682 of Oriental Bead Co. (New York).

BEADS OF COLORED GLASS.—Merchandise classified as articles of colored glass at 45 per cent ad valorem under paragraph 84, tariff act of 1913, is claimed dutiable as beads at 35 per cent under paragraph 333.

Opinion by SULLIVAN, G. A. Round, cylindrical, or egg-shaped glass beads of various colors used in making necklaces were held dutiable as beads loosely strung under paragraph 333, rather than under paragraph 84.

No. 44819.—Protest 939105 of Nelson Bead Co. (New York).

IMITATION PRECIOUS STONES.—It is claimed in this case that merchandise classified as beads at 35 per cent ad valorem under paragraph 333, tariff act of 1913, is dutiable as imitation precious stones at 20 per cent under paragraph 357.

Opinion by SULLIVAN, G. A. On the authority of Abstract 44493, relating to similar merchandise, the claim under paragraph 357 was sustained as to certain items.

No. 44820.—Protest 938422 of Leonhardt & Brush (New York).

AMBER BEADS.—Pieces of amber classified as beaded articles at 50 per cent ad valorem under paragraph 333, tariff act of 1913, are claimed dutiable as semiprecious stones at 20 per cent under paragraph 357.

Opinion by SULLIVAN, G. A. The merchandise which was found to consist of amber beads loosely strung was held dutiable under paragraph 357 as claimed. G. A. 8469 T. D. 38883) followed.

BEFORE BOARD 2, MARCH 20, 1922.

No. 44821.—Protest 936493 of F. W. Myers & Co. (Detroit).

IRON RODS—BOLTS.—So-called truss rods of iron used in packing rolls of roofing, which were classified as manufactures of metal at 20 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed dutiable as bolts of iron at 10 per cent under paragraph 123.

Opinion by FISCHER, G. A. Without proof to show that the merchandise in question is bolts and not rods, the board was unwilling to hold that the collector was wrong and overruled the protest.

No. 44822.—Protest 942489 of Edwin Harding (New York).

MACHINE TOOLS.—A twist drill grinding machine was classified as a manufacture of metal at 20 per cent ad valorem under paragraph 167, tariff act of 1913, and is claimed dutiable as a machine tool at 15 per cent under paragraph 165.

Opinion by FISCHER, G. A. On the amended return of the appraiser the merchandise was held dutiable as a machine tool under paragraph 165 as claimed.

No. 44823.—Protests 941946, etc., of Gallagher & Ascher (New York).

COMMON PAPER-BOX BOARD.—Merchandise classified under paragraph 332, tariff act of 1913, is claimed to be common paper-box board, dutiable at 5 per cent ad valorem under paragraph 320.

Opinion by FISCHER, G. A. Upon stipulation of counsel that the merchandise is the same as that passed upon in Abstract 44616 it was held dutiable as common paper-box board under paragraph 320.

No. 44824.—Protests 941005, etc., of Smith Kirkpatrick & Co. (New York).

HANDMADE COPYING PAPER.—Tissue copying paper classified at 30 per cent ad valorem under paragraph 323, tariff act of 1913, is claimed dutiable as handmade paper at 25 per cent under paragraph 326.

Opinion by FISCHER, G. A. Merchandise invoiced as "Mino copying paper" was found to be handmade and held dutiable under paragraph 326. The protest was overruled as to "Ino copying paper," which was found to be machine made. G. A. 7979 (T. D. 36767) followed.

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No. 44825.—Protest 939265 of H. B. Thomas & Co. (San Francisco).

"PEACE STAMPS."—So-called "Peace stamps" of green paper 1 inch in width by 1¼ inches in length, having imprinted thereon a picture of the Rheims Cathedral and the Latin words "Pax, Veritas, Libertas, and Justitia," were classified as printed matter at 15 per cent ad valorem under paragraph 329, tariff act of 1913, and are claimed entitled to free entry under paragraph 425, 426, or 610.

Opinion by FISCHER, G. A. No proof having been submitted in support of any of the claims the protest was overruled.

No. 44826.—Protests 938621, etc., of Stern Bros. (New York).

EMBROIDERED ARTICLES.—Pieces of woven cotton or flax canvas stitched with an ornamental design in colored wool yarn were classified as embroidered articles at 60 per cent ad valorem under paragraph 358, tariff act of 1913, and are claimed dutiable as manufactures in chief value of wool at 35 per cent under paragraph 288.

Opinion by WELLER, G. A. On the authority of G. A. 8343 (T. D. 38415), affirmed in United States *v.* Field (10 Ct. Cust. Appls. 183; T. D. 38550), the claim under paragraph 288 was sustained.

No. 44827.—Protest 937561-62817, of Mandel Bros. (Chicago), and protests 940807. etc., of Bernard Ulmann Co. (New York).

EMBROIDERED ARTICLES—WRONG CLAIM.—These protests relate to merchandise classified as embroidered articles under paragraph 358, tariff act of 1913.

Opinions by WELLER, G. A. In G. A. 8343 (T. D. 38415), affirmed in United States *v.* Field (10 Ct. Cust. Appls. 183; T. D. 38550), similar merchandise was held properly dutiable as manufactures in chief value of wool under paragraph 288. As these protests do not make that claim they were overruled.

BEFORE BOARD 2, MARCH 23, 1922.

No. 44828.—Protests 938858, etc., of Bloomingdale Bros. et al. (New York).

EMBROIDERED ARTICLES.—Pieces of canvas stitched with an ornamental design in colored wool yarn were classified as embroidered articles under paragraph 358, tariff act of 1913, at 60 per cent ad valorem, and are claimed dutiable as manufactures in chief value of wool at 35 per cent under paragraph 288.

Opinion by WELLER, G. A. On the authority of United States *v.* Field (10 Ct. Cust. Appls. 183; T. D. 38550), affirming G. A. 8343 (T. D. 38415), the articles in question were held dutiable as manufactures of wool under paragraph 288 as claimed.

BEFORE BOARD 3, MARCH 23, 1922.

No. 44829.—Protest 939500 of the International Clearance Co. (Pembina).

HORSES.—Six horses imported from Canada by a returning American citizen were classified under the provision for horses in paragraph 186, tariff act of 1913, at 10 per cent ad valorem. They are claimed entitled to free entry under paragraph 397 which provides for animals imported for breeding purposes.

Opinion by WAITE, G. A. It appeared that the horses in question were not imported for breeding purposes, but were the ordinary farm work horses. The claim under paragraph 397 was therefore overruled. It was also held that paragraph 398 would be inapplicable, as a citizen of the United States is not a person emigrating. Abstract 38141, affirmed in Newton *v.* United States (6 Ct. Cust. Appls. 503; T. D. 36127), cited.

No. 44830.—Protest 939340 of R. F. Jones (Pembina).

DOG.—Free entry under paragraph 397, tariff act of 1913, is claimed for a dog alleged to have been imported for breeding purposes. It was classified under the provision in paragraph 187 for live animals at 10 per cent ad valorem.

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Opinion by WAITE, G. A. The certificates required by the regulations were not filed with the entry. Free entry under paragraph 397 was therefore denied. Abstracts 39040 and 40845 cited.

No. 44831.—Protest 937503 of S. Ishimitsu & Co. (San Francisco).

NARAZUKE—SHOYU—VEGETABLES PREPARED.—Narazuke was classified as prepared vegetables at 25 per cent ad valorem under paragraph 200, tariff act of 1913, the appraiser stating that it is a combination of various kinds of vegetables such as gourd, eggplant, and radishes reduced in size by being sliced. The protest also relates to shoyu which was classified as a sauce at 25 per cent under paragraph 201. Various claims are made.

Opinion by WAITE, G. A. Shoyu was held properly classified under paragraph 201 on the authority of Abstract 43496. The protest was also overruled as to the narazuke, the record not warranting a disturbance of the collector's action.

BEFORE BOARD 2, MARCH 27, 1922.

No. 44832.—Protest 943458 of I. S. Wolf & Co. (New York).

WOVEN FABRICS.—Woven fabrics of artificial silk and cotton classified at 60 per cent ad valorem under paragraph 319, tariff act of 1913, are claimed to be composed in chief value of cotton dutiable at 30 per cent under paragraph 266.

Opinion by HOWELL, G. A. Upon stipulation of counsel that the goods are composed chiefly of cotton they were held dutiable under paragraph 266 as claimed.

No. 44833.—Protests 942526, etc., of H. D. Catty Co. et al. and protest 942662 of J. J. Gavin & Co. (New York), and protests 937297, etc., of Norris, Inc. (Savannah).

CELLOPHANE.—Cellophane in sheets and in rolls, classified at 35 per cent ad valorem under paragraph 319, tariff act of 1913, is claimed dutiable at 15 per cent under paragraph 385.

Opinions by HOWELL, G. A. On the authority of G. A. 8459 (T. D. 38816) the cellophane in question was held dutiable as a nonenumerated manufactured article under paragraph 385.

No. 44834.—Protests 937052, etc., of Sweeney & Johnson et al. and protests 940865, etc., of Mills & Gibb Corp. et al. (Cleveland and New York).

JACQUARD FIGURED UPHOLSTERY GOODS.—Laces classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as Jacquard figured upholstery goods at 35 per cent under paragraph 258.

Opinions by HOWELL, G. A. G. A. 8187 (T. D. 37723), where similar laces were held dutiable under paragraph 258, followed.

BEFORE BOARD 3, MARCH 27, 1922.

No. 44835.—Protests 940799, etc., of Park & Tilford et al. and protest 942492 of Roger & Gallet (New York).

FRENCH INTERNAL REVENUE TAX.—It is claimed here that an item of French internal revenue tax is not dutiable and should not have been included in the dutiable value of certain perfumery.

Opinions by HAY, G. A. The collector reports that the tax in question was included in the entered value and was approved by the appraiser. Duty having been assessed in accordance with the provisions of paragraphs I and M, Section III, tariff act of 1913, the protests were overruled.

No. 44836.—Protest 935885 of Zach Stewart (Seattle).

EARTHENWARE DECORATED.—Merchandise classified as decorated china at 55 per cent ad valorem under paragraph 80, tariff act of 1913, is claimed to be decorated earthenware, dutiable under paragraph 79 at 40 per cent.

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Opinion by HAY, G. A. It having been admitted that the items in question are decorated earthenware they were held dutiable under paragraph 79 as claimed.

BEFORE BOARD 3, MARCH 29, 1922.

No. 44837.—Protest 940990-63071 of Sprague Warner & Co. (Chicago).

CHERRIES PRESERVED.—The appraiser reports that the merchandise is cherries preserved in sugar, imported in hermetically sealed tins. They were classified as preserved fruit at 20 per cent ad valorem under paragraph 217, tariff act of 1913, and are claimed dutiable under paragraph 27 of the emergency tariff of May 28, 1921, at 3 cents per pound.

Opinion by WAITE, G. A. Paragraph 27 of the emergency tariff provides for cherries in a raw state. As it appeared beyond question that the cherries in question are not in that condition the protest was overruled.

No. 44838.—Protest 940706-62708 of Caldwell Shipping Co. (Chicago).

CURRENCY VALUE.—It is claimed here that there should have been a recognition of the depreciation of the currency in which the goods were purchased.

Opinion by WAITE, G. A. The consular certificate of depreciation not having been present at the time of entry the protest was overruled. Abstracts 41372 and 44636 noted.

No. 44839.—Protests 930613-62106, etc., of the F. H. Pfeiffer Crockery Co. (Chicago), protests 937886, etc., 939429, etc., 942515, and 942942 of Chas. Strieff (New York), protests 932736, etc., of Associated Manufacturers Importing Co. (San Francisco), and protests 934514, etc., of Frank P. Dow & Co. and protest 933515 of Geo. S. Bush & Co., Inc. (Seattle).

EMBOSSED CHINA—EMBOSSED EARTHENWARE.—China and earthenware embossed in the mold and classified as decorated are claimed dutiable as plain white.

Opinions by HAY, G. A. On the authority of Abstract 42940, affirmed in United States *v.* Mutual China Co. (9 Ct. Cust. Appls. 232; T. D. 38202), Abstract 43723, affirmed in United States *v.* Todd (11 Ct. Cust. Appls.—; T. D. 38690), and Abstract 43801 embossed china was held dutiable at 50 per cent under paragraph 80 and embossed earthenware at 35 per cent under paragraph 79.

BEFORE BOARD 1, MARCH 31, 1922.

No. 44840.—Protest 943349 of Wiener Bros. (New York).

GALALITH NECKLACES.—Galalith necklaces classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as nonenumerated manufactured articles at 15 per cent under paragraph 385.

Opinion by SULLIVAN, G. A. Galalith necklaces were held dutiable as nonenumerated manufactured articles under paragraph 385. Abstract 44071 followed.

BEFORE BOARD 3, MARCH 31, 1922.

No. 44841.—Protests 934624, etc., of Vogt & Dose (New York).

EMBOSSED CHINA.—Merchandise classified as decorated china at 55 per cent ad valorem is claimed dutiable at only 50 per cent under paragraph 80, tariff act of 1913.

Opinion by HAY, G. A. On the authority of United States *v.* Todd (11 Ct. Cust. Appls.—; T. D. 38690), affirming Abstract 43723, white china embossed in the mold was held dutiable at 50 per cent under paragraph 80.

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No. 44842.—Protests 938253, etc., of T. S. Todd & Co. et al. (New York).

EMBOSSED EARTHENWARE.—Earthenware embossed in the mold is claimed not to be dutiable as decorated.

Embossed earthenware was held dutiable at 35 per cent ad valorem under paragraph 79, tariff act of 1913. Abstract 42940, affirmed in United States *v.* Mutual China Co. (9 Ct. Cust. Appls., 232; T. D. 38202) and Abstract 43723, affirmed in United States *v.* Todd (11 Ct. Cust. Appls.—; T. D. 38690), followed.

REHEARINGS GRANTED.

MARCH 10, 1922.

No. 44843.—VEGETABLES PREPARED.—Protest 939267 of Pacific Trading Co., decided February 20, 1922. Not reported.

MARCH 20, 1922.

No. 44844.—COAL-TAR COLORS.—Protest 941651 of Textile Alliance (Inc.). Abstract 44784.

No. 44845.—CHEMICAL COMPOUND.—Protest 931072 of Dolliver Bro., decided February 21, 1922. Not reported.

BEFORE BOARD 1, APRIL 4, 1922.

No. 44846.—Protest 942186 of M. Goldforb (New York).

IMMORTELLES, DRIED AND DYED.—Dried and dyed immortelles classified at 60 per cent ad valorem under paragraph 347, tariff act of 1913, are claimed dutiable as cut flowers, preserved, by similitude, at 25 per cent under paragraph 210.

Opinion by MCCLELLAND, G. A. On the authority of Bayersdorfer *v.* United States (7 Ct. Cust. Appls. 66; T. D. 36390) the immortelles in question were held dutiable under paragraph 210 as claimed.

No. 44847.—Protest 934408 of Alex. Murphy & Co. (Philadelphia).

GLOVE LEATHER.—Merchandise classified as glove leather at 10 per cent ad valorem under paragraph 359, tariff act of 1913, is claimed free of duty as leather not specially provided for under paragraph 530.

Opinion by MCCLELLAND, G. A. Keshishian *v.* United States (11 Ct. Cust. Appls. —; T. D. 38961) followed, holding unfinished glove leather entitled to free entry under paragraph 530.

BEFORE BOARD 3, APRIL 4, 1922.

No. 44848.—Protest 934605 of D. Gruen Sons & Co. (Cleveland).

CURRENCY VALUE.—Recognition of the depreciation of the currency of invoices of watches and parts from Switzerland is claimed here.

Opinion by WAITE, G. A. The currency certificates required by the regulations not having been filed with the entries, the protest was overruled.

No. 44849.—Protests 933189, etc., of B. R. Anderson & Co. et al. (Seattle, Los Angeles, and Portland (Oreg.)).

NORI—DRIED SEAWEED.—Asakusa nori, a dried seaweed, which was classified as vegetables prepared at 25 per cent ad valorem under paragraph 200, tariff act of 1913, is claimed free of duty as crude seaweed under paragraph 552.

Opinion by WAITE, G. A. On the authority of G. A. 8272 (T. D. 38072) the nori in question was held entitled to free admission as crude seaweed under paragraph 552.

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No. 44850.—Protest 940849 of Peking Bazaar (San Francisco).

FANS.—Merchandise classified under the provision for fans of all kinds at 50 per cent ad valorem in paragraph 349, tariff act of 1913, is claimed entitled to free admission as common palm-leaf fans under paragraph 480.

Opinion by HAY, G. A. The appraiser reports that the fans are composed of a split palm leaf braided and woven after the manner of a basket and the handles wound with chair cane. On the authority of Abstract 44373 they were held not to be common palm leaf and the protest was overruled.

No. 44851.—Protest 940113 of C. J. Tower & Sons (Buffalo).

EMERGENCY TARIFF ACT.—Evaporated milk arriving in the United States May 27, 1921, and entered June 1, 1921, was assessed for duty under paragraph 24 of the emergency tariff of May 27, 1921, and is claimed free of duty under paragraph 547 of the tariff act of 1913.

Opinion by HAY, G. A. On the authority of G. A. 8504 (T. D. 39005) it was held that the law in effect at the time the merchandise was entered and liquidated is the law under which duty should be assessed, and the protest was overruled.

No. 44852.—Protest 938232 of Strachan Shipping Co. (Savannah).

SHIP'S EQUIPMENT—REGULATIONS.—Telemotors used in steering a vessel are claimed free of duty as material used in the construction of a ship under subsection 5, paragraph J, Section IV, tariff act of 1913. Duty was assessed under paragraph 167 at 20 per cent.

Opinion by HAY, G. A. The regulations of the Secretary of the Treasury not having been complied with, the protest was overruled. G. A. 8083 (T. D. 37295) and G. A. 7668 (T. D. 35086) followed.

No. 44853.—Protest 943249 of Chas. Strieff (New York).

EMBOSSED CHINA.—China classified as decorated at 55 per cent ad valorem under paragraph 80, tariff act of 1913, is claimed to be dutiable as not decorated under the same paragraph at 50 per cent.

Opinion by HAY, G. A. Upon stipulation of counsel and the appraiser's report that the articles consist of white china embossed in the mold, they were held dutiable at 50 per cent under paragraph 80. Abstracts 43801 and 43723, affirmed in United States *v.* Todd (11 Ct. Cust. Appls.—; T. D. 38690), followed.

No. 44854.—Protests 936170, etc., of Geo. S. Bush & Co. (Seattle).

EMBOSSED EARTHENWARE.—The question here is whether certain earthenware is dutiable at 35 or 40 per cent ad valorem under paragraph 79, tariff act of 1913.

Opinion by HAY, G. A. White earthenware embossed in the mold was held dutiable at 35 per cent under paragraph 79. Abstract 42940, affirmed in United States *v.* Mutual China Co. (9 Ct. Cust. Appls., 232; T. D. 38202), and Abstract 43723, affirmed in United States *v.* Todd (11 Ct. Cust. Appls.—; T. D. 38690), followed.

No. 44855.—Protest 940836 of Wm. A. Brown & Co. (New York).

CHINESE WINE—DISTILLED SPIRITS.—Merchandise invoiced as "Medicated Nga-Ying spirit" and "Medicated Fu-Kwat spirit" was advisorily classified as alcoholic medicinal preparations at 20 cents per pound and 20 per cent ad valorem under paragraph 16, tariff act of 1913, and applying paragraph 239. The collector assessed duty at $2.60 per gallon under paragraph 239, and additional duty under section 300, war revenue act of 1917, at $1.10 per gallon. The importers contend that the merchandise is not distilled spirits and not dutiable under the war revenue act of 1917 and further claim that under that section there is authority to collect a tax on perfumery only.

Opinion by ADAMSON, G. A. Chinese wines were held to be spirituous beverages. G. A. 2098 (T. D. 14047), G. A. 2295 (T. D. 14411), G. A. 5421 (T. D. 24675), G. A. 7213 (T. D. 31523) cited. Protest overruled. United States *v.* Shallus (9 Ct. Cust. Appls. 168; T. D. 37999) and G. A. 8465 (T. D. 38875) noted.

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No. 44856.—Protest 936977 of Bullocks (Los Angeles).

SHORTAGE.—A refund of duty is claimed here for certain merchandise which was not imported.

Opinion by ADAMSON, G. A. The evidence was found to sustain the claim of shortage, and a refund was directed.

No. 44857.—Protest 937838 of Oriental Incense & Sunset Perfume Co. (Los Angeles).

JOSS STICKS.—Merchandise invoiced as "joss sticks (punk)" was classified as a nonenumerated article at 15 per cent ad valorem under paragraph 385, tariff act of 1913. It is claimed to be free of duty as joss sticks under paragraph 521.

Opinion by ADAMSON, G. A. Strips of bamboo about a foot long, covered over half the length with some substance which looks like the punk ordinarily used for lighting firecrackers, were held properly classified under paragraph 385. The protest was sustained as to smaller sticks shown to have no other use than as joss sticks, which are provided for under paragraph 521 of the free list.

BEFORE BOARD 1, APRIL 6, 1922.

No. 44858.—Protest 940321 of H. W. Robinson & Co. (New York).

AMETHYST BEADS.—Real amethyst classified as beads at 35 per cent ad valorem under paragraph 333, tariff act of 1913, is claimed dutiable under the provision for precious and semiprecious stones in paragraph 357 at 20 per cent.

Opinion by SULLIVAN, G. A. In view of the stipulation that the amethyst beads are in fact real amethysts, the claim under paragraph 357 was sustained.

No. 44859.—Protests 939091, etc., of Zucker & Josephy (New York).

CELLULOID FAN HANDLES.—Fan handles classified as celluloid articles at 40 per cent ad valorem under paragraph 25, tariff act of 1913, are claimed dutiable at 15 per cent under paragraph 385 or at 25 per cent under paragraph 34.

Opinion by SULLIVAN, G. A. From the report of the analyst it was found that the fan handles in question were properly classified as celluloid articles under paragraph 25.

No. 44860.—Protests 942078, etc., of American Express Co. (New York).

RUGS.—Rugs made from Axminster or chenille carpeting classified at 50 per cent ad valorem under paragraph 300, tariff act of 1913, are claimed dutiable at 35 per cent under paragraph 293.

Opinion by BROWN, G. A. On the authority of United States *v.* Trorlicht (10 Ct. Cust. Appls. 254; T. D. 38618) the rugs in question were held dutiable as Axminster or chenille carpets under paragraph 293.

BEFORE BOARD 3, APRIL 6, 1922.

No. 44861.—Protest 940899 of F. W. Myers & Co. (Ogdensburg).

VEAL—CALFSKINS.—Veal in the form of the carcasses of calves with the skins on was assessed as veal at 2 cents per pound under paragraph 14, emergency act. It is claimed that the skins should have been admitted free of duty under paragraph 506, tariff act of 1913.

Opinion by WAITE, G. A. It was found that the skins represent 10 per cent of the total weight which it was held should be admitted free under paragraph 506, tariff act of 1913, as claimed.

No. 44862.—Protest 934310 of Bullocks (Los Angeles).

ANTIQUES—REGULATIONS.—Certain beaded bags classified as beaded articles at 50 per cent ad valorem under paragraph 333, tariff act of 1913, are claimed free of duty as antiques under paragraph 656.

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Opinion by WAITE, G. A. The regulations not having been complied with the protest was overruled. Abstracts 42303 and 44358 followed.

No. 44863.—Protest 939165 of B. Sirotta (New York).

MODELS OF WEARING APPAREL.—Models of women's wearing apparel entered under a six months' bond and exported are claimed free of duty under the provisions of subsection 4, paragraph J, Section IV, tariff act of 1913.

Opinion by HAY, G. A. It appears that one of the gowns covered by the bond was sold in this country and for that reason the collector treated the bond as vitiated. This case was found to come within the law as construed by the Court of Customs Appeals and the protest was sustained.

No. 44864.—Protest 943248 of Meakin & Ridgway and protest 937885 of Chas. Strieff (New York).

EMBOSSED CHINA.—Merchandise classified as decorated china at 55 per cent ad valorem is claimed dutiable at only 50 per cent under the provisions of paragraph 80, tariff act of 1913.

Opinions by HAY, G. A. On the authority of Abstract 43723, affirmed in United States *v.* Todd (11 Ct. Cust. Appls. —; T. D. 38690) and Abstract 43801, white china embossed in the mold was held dutiable at 50 per cent under paragraph 80.

No. 44865.—Protests 930368, etc., of Baltimore & Ohio Railroad Co. et al. (Baltimore and Philadelphia).

EMBOSSED EARTHENWARE—SUFFICIENCY OF PROTEST.—These protests relate to embossed earthenware classified at 40 per cent ad valorem under paragraph 79, tariff act of 1913. One protest claims that it should have been assessed as "plain white earthenware" at 50 per cent under paragraph 80.

Opinion by HAY, G. A. On the authority of Abstract 42490, affirmed in United States *v.* Mutual China Co. (9 Ct. Cust. Appls. 232; T. D. 38202) and Abstract 43723, affirmed in United States *v.* Todd (11 Ct. Cust. Appls. —; T. D. 38690), earthenware embossed in the mold was held dutiable at 35 per cent under paragraph 79. The protest making the correct claim but giving the wrong paragraph and rate was held sufficient. G. A. 8006 (T. D. 36897) cited.

BEFORE BOARD 1, APRIL 10, 1922.

No. 44866.—Protest 943394 of Stern Bros. (New York).

APPORTIONMENT OF VALUE—MANUFACTURES OF WOOL.—It is claimed here that in the value of certain wrist watches a greater sum should have been allowed for the value of the movements. Pieces of canvas stitched with an ornamental design in colored wool which were classified as embroidered articles at 60 per cent ad valorem, under paragraph 358, tariff act of 1913, are claimed dutiable as manufactures of wool at 35 per cent under paragraph 288.

Opinion by SULLIVAN, G. A. The claim regarding the vlaue of the wrist watches was overruled. Abstract 44779 cited. On the authority of United States *v.* Field (10 Ct. Cust. Appls. 183; T. D. 38550) the pieces of canvas were held dutiable as manufactures of wool under paragraph 288.

No. 44867.—Protest 943348 of Jas. A. Hearn & Son, Inc. (New York).

GALALITH ARTICLES—HORN COMBS.—Necklaces, girdles, and buckles composed of galalith and combs composed of horn, decorated, were classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, and are claimed dutiable under paragraphs 385 and 368, respectively.

Opinion by SULLIVAN, G. A. The protest was sustained as to the galalith articles claimed dutiable at 15 per cent under paragraph 385, but overruled as to the horn

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combs, which are eo nomine provided for at 25 per cent in paragraph 368, but which were claimed dutiable at 15 or 20 per cent under the same paragraph. Bliven *v.* United States (1 Ct. Cust. Appls. 208; T. D. 31239) cited.

No. 44868.—Protest 942539 of Friedman & Co. (New York).

BEAD NECKLACES.—Bead necklaces which have to be restrung after importation were classified as beaded articles at 50 per cent ad valorem under paragraph 333, tariff act of 1913, and are claimed dutiable at only 35 per cent under the same paragraph.

Opinion by SULLIVAN, G. A. Bead necklaces which were found to be strung loosely for facility in transportation were held dutiable at 35 per cent under paragraph 333 as claimed.

BEFORE BOARD 3, APRIL 10, 1922.

No. 44869.—Protests 938932, etc., of Mow Lee & Co. et al. (San Francisco).

DUCK EGGS—EGGS PREPARED OR PRESERVED.—Duck eggs which have been treated with lime and water, imported in wooden crates and surrounded by the mixture, were classified as eggs prepared or preserved at 2 cents per pound under paragraph 203, tariff act of 1913. They are claimed free of duty as eggs of poultry under paragraph 478.

Opinion by WAITE, G. A. It was stipulated that the mixing of lime and water generates heat sufficient to cook the eggs so that they may be eaten without further preparation. They were therefore held properly classified as prepared or preserved under paragraph 203.

BEFORE BOARD 1, APRIL 12, 1922.

No. 44870.—Protest 939698 of D. Lisner & Co. (New York).

IMITATION CORAL BEADS—AMBER BEADS—SUFFICIENCY OF PROTEST.—This protest is against the assessment of duty at 35 per cent ad valorem on coral or amber beads or pieces of amber, claimed dutiable at 10 per cent under paragraph 367 or at 20 per cent under paragraph 357.

Opinion by SULLIVAN, G. A. On the authority of G. A. 8469 (T. D. 38883) the amber beads were held dutiable at 20 per cent under paragraph 357. The protest was overruled so far as the imitation coral beads are concerned, there being nothing in the record to show that the merchandise and facts are the same as in United States *v.* Battiloro (9 Ct. Cust. Appls. 180; T. D. 38002) and United States *v.* Bartiromo (9 id. 183; T. D. 38003), which were cited. United States *v.* Lun Chong (3 Ct. Cust. Appls. 468; T. D. 33041) followed. Brown, G. A., dissents as to the coral.

No. 44871.—Protests 942511, etc., of G. Sorrentino (New York.)

NECKLACES OF CORAL, SHELL, GLASS BEADS, ETC.—Some of the merchandise in question was assessed as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, and the remainder as articles in chief value of coral at 45 per cent under paragraph 98. It is claimed dutiable at 20 per cent under paragraph 357, or at 35 per cent under paragraph 333.

Opinion by SULLIVAN, G. A. As to the coral and shell or glass beads it was shown that 75 to 80 per cent of the value of these strings is coral, and the remainder shell or glass beads. On the authority of Consolidated Elevator Co. *v.* United States (8 Ct. Cust. Appls. 267; T. D. 37536) the coral beads were held dutiable at 20 per cent under paragraph 357 and the shell and glass bead portion at 35 per cent under paragraph 333. Necklaces in chief value of coral, complete with clasps were held properly classified as jewelry under paragraph 356.

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BEFORE BOARD 3, APRIL 12, 1922.

No. 44872.—Protest 938678 of Doniger & Co. (New York).

COMMISSIONS.—The question here is whether an item of commission is dutiable or nondutiable.

Opinion by WAITE, G. A. The collector reports that the item in question was included in the entered value by the importers. Nothing having been found in the papers to bring the case within the exception of the rule laid down in paragraph I, section 3, tariff act of 1913, the protest was overruled.

No. 44873.—Protest 941878 of H. Finger & Co. (New York).

ENTERED VALUE.—Two cylinders which were entered at a value of $10 each were returned by the appraiser at a value of $5 each. The collector assessed duty upon the value as declared by the importer.

Opinion by HAY, G. A. The collector's action which was in accordance with the provisions of paragraph I, section 3, tariff act of 1913, was affirmed and the protest overruled.

No. 44874.—Protests 940278, etc., of John Platt & Co. (New York).

SHIP'S EQUIPMENT—PROPELLER GOVERNORS.—Mechanical devices, called Aspinall governors, designed to regulate the revolutions of a ship's propeller, are claimed entitled to free entry as ship's equipment under subsection 5 or 6, paragraph J, section 4, tariff act of 1913. They were assessed as manufactures of metal at 20 per cent under paragraph 167.

Opinion by HAY, G. A. Aside from the question of compliance with the regulations, the protests were overruled on the authority of Abstracts 43846 and 43853.

No. 44875.—Protest 940112 of Larkin Co. (Buffalo).

EMERGENCY TARIFF—DELAY IN LIQUIDATION.—The question here is whether cotton quilts were properly assessed under the emergency tariff act of May 27, 1921.

Opinion by HAY, G. A. The cases of quilts in question arrived at New York on October 2, 1920, where they were entered for warehouse, and on March 14, 1921, a consumption entry intended to cover the quilts in question was filed at Buffalo. Through the error of the warehouse at New York or some other agency, instead of the four cases of quilts four bales of rugs were forwarded. The quilts did not reach Buffalo until June 20, 1921. It was held that this mistake, while unfortunate, can not influence the decision that the merchandise was properly assessed. G. A. 5249 (T. D. 24118), Abstract 38978, and G. A. 8504 (T. D. 39005) followed.

No. 44876.—Protest 944152 of Rene Brierre (New York).

SHORTAGE OF CLOTHING.—It is alleged here that 6 suits of clothing failed to arrive. The discharging inspector reported the package was delivered as corded and sealed, and the appraiser states that the package was received in bad order, not corded and sealed, and a portion of the invoiced contents found missing, apparently robbed.

Opinion by ADAMSON, G. A. The reports showing that the package left the dock corded and sealed and was in bad order when examined later by the appraiser, the protest was overruled.

No. 44877.—Protest 943910 of F. Frisch (New York).

SHORTAGE OF LINEN.—The assessment of duty on 129½ yards of linen alleged to have been short shipped is protested here. The appraiser reported "Number of pieces correct, yardage wrong, apparent error on part of shipper in verifying yardage."

Opinion by ADAMSON, G. A. There was no proof offered to sustain the claim, and the opinion of the appraiser, under the circumstances, failed to carry conviction The protest was therefore overruled.

No. 44878.—Protest 943531 of George Lueders & Co. (New York).

SHORTAGE OF OIL.—A refund of duty is sought in this case on certain bottles of oil found short by the appraiser.

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Opinion by ADAMSON, G. A. The discharging inspector reported that the case had been recoopered and it was found that the missing bottles of oil were never landed in the United States. The protest was therefore sustained.

No. 44879.—Protest 943368 of Heyliger & Raubitschek (New York).

SHORTAGE OF GLOVES.—The payment of duty on 6 dozen pairs of gloves claimed to have been short is protested here.

Opinion by ADAMSON, G. A. Being satisfied from the evidence that 6 dozen pairs of gloves were short landed, the protest was sustained.

No. 44880.—Protest 942258 of American Bead Co. and protest 942256 of M. J. Corbett & Co. (New York).

SHORTAGE—UNEXAMINED PACKAGES.—In these cases the collector refused to make allowance for alleged shortages because the discharging inspectors reported the packages were landed in good order and the proofs of shortage in unexamined packages required by T. D. 37813 were not furnished.

Opinions by ADAMSON, G. A. The collector undoubtedly having done right in the absence of the proof required by the regulations, the protests were overruled.

No. 44881.—Protest 941332 of J. R. Simon & Co. (New York).

SHORTAGE—NONIMPORTATION.—This protest is against the payment of duty on merchandise short shipped. In the absence of the oath required by the customs regulations duty was assessed on the total invoiced and entered quantity.

Opinion by ADAMSON, G. A. A nonimportation of the merchandise in question having been clearly established the protest was sustained.

BEFORE BOARD 1, APRIL 14, 1922.

No. 44882.—Protest 944472 of B. Altman & Co. (New York).

COTTON RUGS—BATH MATS.—Merchandise classified as bath mats made of cotton at 25 per cent ad valorem under paragraph 264, tariff act of 1913, is claimed dutiable at 20 per cent under paragraph 302.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel that the merchandise consists of cotton bath rugs identical with those held dutiable at 20 per cent under paragraph 302 in Abstract 38503, the protest was sustained.

No. 44883.—Protests 939269, etc., of R. U. Delapenha & Co. (New York).

CANDY CONTAINERS—TOYS.—Cradles, canoes, motors, bedsteads, and other articles composed of cardboard and containing a few pieces of cheap confectionery were classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, and are claimed dutiable at 5 or 7 cents per pound under paragraph 325.

Opinion by SULLIVAN, G. A. Upon stipulation of counsel that the merchandise is the same in all material respects as that the subject of Abstract 44665, the containers in question, in chief value of lithographically printed paper, were held dutiable according to the thickness thereof under paragraph 325.

No. 44884.—Protest 945352 of Wm. Bussang and protests 940961, etc., of Wm. B. Leonard (New York).

FLANNELS.—Merchandise classified as wool cloth at 35 per cent ad valorem under paragraph 288, tariff act of 1913, is claimed dutiable as flannel at 30 per cent under paragraph 289.

Opinions by BROWN, G. A. On the authority of Connor *v.* United States (9 Ct Cust. Appls. 312; T. D. 38241) the claim under paragraph 289 was sustained.

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BEFORE BOARD 3, APRIL 14, 1922.

No. 44885.—Protest 912183 of Geo. Borgfeldt & Co. (New York).

EMBOSSED CHINA.—The question here is whether china embossed in the mold is dutiable as decorated or as plain white under the provisions of paragraph 80, tariff act of 1913.

Opinion by HAY, G. A. On the authority of United States *v.* Todd (11 Ct. Cust. Appls. —; T. D. 38690) and Abstract 43801 china embossed in the mold was held dutiable at 50 per cent under paragraph 80 as claimed.

No. 44886.—Protest 938166 of Sugar Products Co. (New Orleans).

VALUE OF MOLASSES—IMPROPER REMEDY.—Waste molasses invoiced at 2 cents per gallon was appraised at 3 cents per gallon. The examiner announced that he had made an error in advancing the molasses but was not permitted to correct his return. Notice of advance was given to the importer, who filed an application with the collector that the papers be returned to the appraiser for correction of the error. The appraiser retained the papers for several months without taking action thereon, and no appeal to reappraisement was filed. The entry was liquidated as appraised and additional duty was assessed.

Opinion by HAY, G. A. Immediately upon discovering the advance the importer should have filed an appeal to reappraisement as provided in paragraph M, section 3, tariff act of 1913. The protest was overruled.

No. 44887.—Protest 943016 of H. W. Robinson & Co. (New York).

SHORTAGE.—It is sought here to recover duty assessed on certain articles alleged to have been found short.

Opinion by ADAMSON, G. A. The shortage having been established beyond all question the protest was sustained. United States *v.* Borgfeldt (11 Ct. Cust. Appls. —; T. D. 38934) cited.

BEFORE BOARD 3, APRIL 18, 1922.

No. 44888.—Protests 944248 and 944453, etc., of Chas. Streiff (New York).

EMBOSSED EARTHENWARE.—It is claimed here that earthenware embossed in the mold is dutiable at 35 per cent ad valorem, rather than at 40 per cent under paragraph 79, tariff act of 1913.

Opinions by HAY, G. A. On the authority of Abstract 42940, affirmed in United States *v.* Mutual China Co. (9 Ct. Cust. Appls. 232; T. D. 38202) and Abstract 43723, affirmed in United States *v.* Todd (11 Ct. Cust. Appls. —; T. D. 38690), embossed earthenware was held dutiable at 35 per cent under paragraph 79 as claimed.

No. 44889.—Protest 943709 of Haviland & Co., protests 944247 and 944257 of Chas. Streiff, and protest 943277 of Vogt & Dose (New York).

EMBOSSED CHINA.—Embossed china, which was classified as decorated at 55 per cent ad valorem, is claimed dutiable as plain white at 50 per cent under the provisions of paragraph 80, tariff act of 1913.

Opinions by HAY, G. A. Abstract 43723, affirmed in United States *v.* Todd (11 Ct. Cust. Appls. —; T. D. 38690), and Abstract 43801 followed holding china embossed in the mold dutiable at 50 per cent under paragraph 80.

No. 44890.—Protest 942182 of Geo. Borgfeldt & Co. (New York).

KEWPIE DOLLS—TOYS.—Bisque kewpies classified at 55 per cent ad valorem under paragraph 80, tariff act of 1913, are claimed dutiable as dolls at 35 per cent under paragraph 342.

Opinion by HAY, G. A. On the authority of Abstract 38185 the kewpies in question were held dutiable as dolls under paragraph 342. Abstract 44361 cited.

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No. 44891.—Protest 940474-63052 of Hart, Schaffner & Marx and protest 940475-63053 of G. W. Sheldon & Co. (Chicago).

EMERGENCY TARIFF.—The question here is whether certain wool cloth is subject to additional duty under the emergency act of May 27, 1921, the claim being that the merchandise was imported prior to the effective date of that act.

Opinions by HAY, G. A. The protests were overruled on the authority of G. A. 8504 (T. D. 39005) holding that the law in effect at the time the merchandise was entered and liquidated is the law under which duty should be assessed.

No. 44892.—Protest 939502 of Dohrmann Commercial Co. (San Francisco).

CHINA—EARTHENWARE.—Merchandise classified as decorated china under paragraph 80, tariff act of 1913, is claimed to be decorated earthenware, dutiable under paragraph 79.

Opinion by HAY, G. A. It was found that the evidence failed to sustain the importer's contention and the classification under paragraph 80 was affirmed.

No. 44893.—Protest 940467 of Wm. H. Masson (Baltimore) and protest 937890 of Gallagher & Ascher (New York).

INSECT POWDER.—Insect powder classified at 15 per cent ad valorem under paragraph 385, tariff act of 1913, is claimed dutiable at 10 per cent under paragraph 27.

Opinions by HAY, G. A. United States *v.* Nagase (11 Ct. Cust. Appls. —; T. D. 38939) followed holding insect powder dutiable at 10 per cent under paragraph 27.

No. 44894.—Protest 942589 of Morgan Crucible Co. (New York).

CARBON RODS.—Merchandise classified as carbon brushes at 25 per cent ad valorem under paragraph 81, tariff act of 1913, is claimed to be rough carbon rods, dutiable as manufactures of carbon at 20 per cent under the same paragraph.

Opinion by HAY, G. A. The appraiser admits the merchandise should have been returned as a manufacture of carbon at 20 per cent under paragraph 81. On the authority of Knott *v.* United States (9 Ct. Cust. Appls. 93; T. D. 37948) relating to similar merchandise the protest was sustained.

No. 44895.—Protest 934615 of P. Duff & Sons (Pittsburgh).

CLERICAL ERROR.—It is alleged that the value of packing cases was included twice in the dutiable value of certain merchandise.

Opinion by HAY, G. A. It appeared that in arriving at the value declared upon entry the importers added the cost of the cases as a separate item to the invoice price. The collector liquidated the entry at the entered value and there was no manifest clerical error. The protest was overruled.

No. 44896.—Protest 942769 of F. Murray Hill (New York).

INSPECTION CHARGES.—It is claimed here that inspection charges are not part of the dutiable value of the merchandise in question.

Opinion by HAY, G. A. The charges in question were included on entry and approved by the appraiser. Abstract 44376 was therefore found not to apply and the protest was overruled.

BEFORE BOARD 1, APRIL 20, 1922.

No. 44897.—Protest 940584 of Wilfred Schade Forwarding Co. (St. Louis).

BROOM HANDLES—MOP HANDLES.—Mop handles classified as manufactures of wood at 15 per cent ad valorem under paragraph 176, tariff act of 1913, are claimed free of duty as broom handles under paragraph 647.

Opinion by MCCLELLAND, G. A. The merchandise in question was held entitled to free entry under paragraph 647 as broom handles. G. A. 8428 (T. D. 38700) and Abstract 44693 followed.

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No. 44898.—Protest 939109 of J. T. Steeb & Co., Inc. (Portland, Oreg.).

OAK LUMBER—CABINET WOOD.—Merchandise invoiced as "oak clear chair stock," and classified as cabinet wood at 10 per cent ad valorem under paragraph 169, tariff act of 1913, is claimed free of duty under paragraph 647 or 648.

Opinion by MCCLELLAND, G. A. Japanese oak about 18 inches by 1½ inches for use in the manufacture of chairs was held properly classified as cabinet wood under paragraph 169, on the authority of Wheeler *v.* United States (11 Ct. Cust. Appls. —; T. D. 38752).

No. 44899.—Protest 939043 of Overton & Co. (New York).

LAMBSKINS, ALUM-TANNED.—Alum-tanned lambskins classified at 10 per cent ad valorem under paragraph 359, tariff act of 1913, are claimed free of duty without mentioning the paragraph of the free list.

Opinion by MCCLELLAND, G. A. Paragraph 530 being the only one under which ree entry of like merchandise could be allowed, the claim was sustained. Keshishian *v.* United States (11 Ct. Cust. Appls. —; T. D. 38961) followed.

No. 44900.—Protest 937106–62820 of Sears, Roebuck & Co. (Chicago).

PAPIER MÂCHÉ CANDY BOXES.—The appraiser reports that the merchandise consists of assorted fruits made of papier mâché. It was classified as artificial fruits at 60 per cent ad valorem under paragraph 347, tariff act of 1913, and is claimed dutiable under paragraph 369, 81, 385, or 324.

Opinion by MCCLELLAND, G. A. The merchandise was found to consist of crude mitations of apples, pears, plums, peaches, and oranges of papier mâché. They were held dutiable as manufactures of papier mâché at 25 per cent under paragraph 369. United States *v.* Dieckerhoff (4 Ct. Cust. Appls. 384; T. D. 33796) followed.

No. 44901.—Protest 944413 of Geo. Borgfeldt & Co. (New York).

CHRISTMAS-TREE ORNAMENTS.—Christmas-tree ornaments in the form of small globular articles of colored glass classified as beaded articles at 50 per cent ad valorem under paragraph 333, tariff act of 1913, are claimed dutiable as articles of colored glass at 45 per cent under paragraph 84.

Opinion by SULLIVAN, G. A. On the authority of G. A. 8427 (T. D. 38697) the Christmas-tree ornaments in question were held dutiable under paragraph 84.

No. 44902.—Protest 944506 of Cohn & Rosenberger, Inc. (New York).

STRUNG BEADS.—Merchandise classified as beaded articles at 50 per cent ad valorem is claimed dutiable as beads temporarily strung at only 35 per cent under paragraph 333, tariff act of 1913.

Opinion by SULLIVAN, G. A. On the strength of the collector's report that the beads in question were erroneously classified at 50 per cent, they were held dutiable at 35 per cent under paragraph 333, as claimed.

No. 44903.—Protest 935397 of Wa Sang Lung & Co. (San Francisco).

ROCK CRYSTAL NECKLACES—JADE BRACELETS AND RINGS—JEWELRY.—This merchandise was classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, and is claimed dutiable at various lower rates. It consists of Mandarin necklaces composed of rock crystal and jade stone bracelets and rings.

Opinion by SULLIVAN, G. A. Various authorities are cited by the protestants, but no evidence was offered to show that the merchandise is like that in the cases cited. The protest was therefore overruled. American Bead Co. *v.* United States (7 Ct. Cust. Appls. 18; T. D. 36259), Hamrah *v.* United States (11 Ct. Cust Appls. —; T. D. 38945), and Ulmann *v.* United States (4 Ct. Cust. Appls. 77; T. D. 33363) cited. Brown, G. A., concurred.

No. 44904.—Protest 942159 of D. C. Andrews & Co. (Philadelphia).

ORDOVAL G—CHEMICAL COMPOUND.—Tanning extract, ordoval G is claimed not subject to additional duty of 2½ cents per pound under the act of 1916.

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Opinion by BROWN, G. A. From the analysis it was found that ordoval G is not a coal-tar derivative or a synthetic organic chemical. It was therefore held dutiable at 15 per cent ad valorem under Group II, Title III, act of 1916, as claimed.

No. 44905.—Protest 941651 of Textile Alliance, Inc. (New York).

ALIZARIN DYES.—Alizarin dyes are here claimed dutiable at 30 per cent ad valorem under the act of September 8, 1916.

Opinion by BROWN, G. A. The protest was sustained and the dyes in question were held dutiable at 30 per cent as claimed.

No. 44906.—Protest 941363 of Louis Rosenberg (New York).

WOOL COATS.—Raglan coats classified at 35 per cent ad valorem under paragraph 291, tariff act of 1913, are claimed dutiable at 30 per cent under paragraph 256 or 266.

Opinion by BROWN, G. A. The analysis showing wool to be chief value in the coats in question they were held properly classified under paragraph 291.

No. 44907.—Protest 939816 of D. C. Andrews (New York).

NAPHTHALENE.—The question here is the solidifying point of certain naphthalene classified under Group II of the act of 1916.

Opinion by BROWN, G. A. The evidence not overcoming the presumption of the correctness of the classification, the claim for free entry was overruled.

No. 44908.—Protests 944452, etc., of L. Bamberger & Co. et al. and protest 944312 of Syndicate Trading Co. (New York), and protests 937929, etc., of Kaufmann & Baer Co. et al. (Pittsburgh).

RUGS.—Rugs made from chenille carpeting, classified at 50 per cent ad valorem under paragraph 300, tariff act of 1913, are claimed dutiable at 35 per cent under paragraph 293.

Opinions by BROWN, G. A. United States *v.* Trorlicht (10 Ct. Cust. Appls. 254; T. D. 38618) followed holding similar rugs dutiable at 35 per cent under paragraph 293.

BEFORE BOARD 3, APRIL 20, 1922.

No. 44909.—Protests 939785, etc., of Harris Abattoir Co. et al. (Detroit).

EMERGENCY TARIFF.—The question here is whether an importation of fresh meat is free of duty under paragraph 545 of the tariff act of 1913, or dutiable under paragraph 14 of the emergency tariff.

Opinion by HAY, G. A. The meat arrived on May 27, 1921, but was not entered until after that date. Therefore it was held dutiable under the emergency tariff act. G. A. 8504 (T. D. 39005) followed.

No. 44910.—Protest 931929 of Frank P. Dow Co. (Seattle).

HOUSEHOLD EFFECTS.—Free entry is claimed here for certain articles under the household effects paragraph, 428, of the tariff act of 1913.

Opinion by HAY, G. A. The articles in question were found to be household effects used abroad by the protestant in the home of her father for several years preceding her marriage. They were therefore held entitled to free admission under paragraph 428.

No. 44911.—Protests 939146-62941, etc., of Bernard Judae & Co. et al. (Chicago).

CHINA BUSTS—DOLLS.—China busts and heads of women to be used in making lamp shades and similar articles, which were classified as decorated china at 55 per cent ad valorem under paragraph 80, tariff act of 1913, are claimed dutiable as dolls and dolls' heads at 35 per cent under paragraph 342.

Opinion by HAY, G. A. The presumption in favor of the correctness of the collector's classification under paragraph 80 was not overcome by the evidence offered, and the protests were overruled.

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No. 44912.—Protest 945119 of Haviland & Co., protest 943546 of Hensel, Bruckmann & Lorbacher (Inc.), and protest 945353 of Chas. Streiff (New York).

EMBOSSED CHINA.—China embossed in the mold, which was classified as decorated at 55 per cent ad valorem, is claimed dutiable at 50 per cent under paragraph 80, tariff act of 1913.

Opinions by HAY, G. A. On the authority of Abstract 43723, affirmed in United States *v.* Todd (11 Ct. Cust. Appls. —; T. D. 38690), and Abstract 43801, embossed china was held dutiable at 50 per cent under paragraph 80.

BEFORE BOARD 2, APRIL 24, 1922.

No. 44913.—Protest 938152 of Portland Seed Co. (Portland, Oreg.).

SEED-CLEANING MACHINES.—Parts of grass-seed cleaning machines classified as manufactures of metal at 20 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed entitled to free entry as parts of agricultural implements under paragraph 391.

Opinion by FISCHER, G. A. It was found that the machines in question are not intended for use by farmers, but by seed warehousemen. They were therefore held not classifiable as agricultural implements under paragraph 391. Abstract 44461 noted.

No. 44914.—Protest 942443 of P. H. Petry Co. (New York).

EXPOSITOR'S GREEK TESTAMENT—TEXTBOOK.—Expositor's Greek Testaments, which were classified as books at 15 per cent ad valorem under paragraph 329, tariff act of 1913, are claimed to be free of duty as textbooks under paragraph 425.

Opinion by FISCHER, G. A. The claim for free admission as textbooks under paragraph 425 was overruled, the record not showing that they were in fact used in schools or other educational institutions.

No. 44915.—Protest 940504 of the Halle Bros. Co. (Cleveland).

METAL-THREAD RIBBONS.—Metal-thread ribbons classified as trimmings at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable at 40 per cent under paragraph 150.

Opinion by FISCHER, G. A. On the authority of Siegman *v.* United States (7 Ct. Cust. Appls. 195; T. D. 36506) the metal-thread ribbons in question were held dutiable under paragraph 150 as claimed.

No. 44916.—Protest 939196 of the Diem & Wing Paper Co. (Cleveland).

SURFACE-DECORATED PAPER—WRAPPING PAPER.—Paper classified at 35 per cent ad valorem under paragraph 324, tariff act of 1913, is claimed dutiable as wrapping paper at 25 per cent under paragraph 328.

Opinion by FISCHER, G. A. The paper in question was held properly classified under paragraph 324. G. A. 7843 (T. D. 36089) followed.

No. 44917.—Protests 934732, etc., of F. F. Gavin & Co. et al. (New York).

WOOL AND SILK FABRICS.—Woven fabrics classified as composed in chief value of silk at 45 per cent ad valorem under paragraph 318, tariff act of 1913, are claimed to be composed chiefly of wool, dutiable at 35 per cent under paragraph 288 or 290.

Opinion by HOWELL, G. A. It was found that the goods in question are composed in chief value of wool. They were therefore held dutiable at 35 per cent under paragraph 288.

No. 44918.—Protests 935727, etc., of M. J. Frank & Co., protests 943032, etc., of Henle Wax Paper Mfg. Co., and protests 939433, etc., of A. H. Ringk & Co. et al. (New York).

CELLOPHANE.—Cellophane in sheets, in reels, and in rolls, classified as artificial silk at 35 per cent ad valorem under paragraph 319, tariff act of 1913, is claimed dutiable as a nonenumerated manufactured article at 15 per cent under paragraph 385.

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Opinions by HOWELL, G. A. G. A. 8459 (T. D. 38816) and Abstract 44422 followed, holding cellophane dutiable at 15 per cent under paragraph 385.

No. 44919.—Protest 939154 of Geo. S. Bush & Co., Inc. (Seattle).

SOLE AND HEEL ATTACHMENTS.—Rubber sole and heel attachments, with nails or pegs, classified as wearing apparel of cotton and india rubber at 30 per cent ad valorem under paragraph 256, tariff act of 1913, are claimed dutiable as manufactures in chief value of india rubber at 10 per cent under paragraph 368.

Opinion by WELLER, G. A. The sole and heel attachments in question were held dutiable as manufactures of india rubber under paragraph 368. G. A. 8445 (T. D. 38763) followed.

BEFORE BOARD 1, APRIL 25, 1922.

No. 44920.—Protest 944922 of W. A. Brown (New York).

COLORING.—Vegetable coloring classified at 40 per cent ad valorem under paragraph 26, tariff act of 1913, is claimed dutiable at three-eighths of 1 cent per pound under paragraph 30.

Opinion by BROWN, G. A. On the authority of Abstract 44259 the coloring in question was held dutiable under paragraph 30.

No. 44921.—Protest 942439 of Textile Alliance, Inc. (New York).

ALIZARIN DYES.—Merchandise invoiced as helio fast blue B. C. conc and helio fast blue S. L. conc classified at 30 per cent ad valorem and 5 cents per pound under section 501 of the act of 1916 is claimed dutiable at only 30 per cent ad valorem under section 500 of said act.

Opinion by BROWN, G. A. The record showing there was an error in the classification the dyes in question were held dutiable at 30 per cent ad valorem under section 500 as claimed.

No. 44922.—Protest 945242 of H. W. Robinson & Co. (New York).

FLANNELS.—The question here is whether certain merchandise is dutiable as wool cloth at 35 per cent ad valorem under paragraph 288, tariff act of 1913, or as flannels under paragraph 289.

Opinion by BROWN, G. A. Certain items were held dutiable as flannels under paragraph 289 as claimed.

BEFORE BOARD 2, APRIL 25, 1922.

No. 44923.—Protest 945358 of J. R. Gaunt & Son (New York).

METAL BUTTONS.—Military cap and collar ornaments classified as manufactures of metal at 20 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed dutiable as metal buttons at 15 per cent under paragraph 151.

Opinion by FISCHER, G. A. On the authority of G. A. 8423 (T. D. 38684) the merchandise was held dutiable as metal buttons under paragraph 151 in accordance with the amended report of the appraiser.

No. 44924.—Protest 940247 of American Trading Co. (New York).

DAY SHELLS—TISSUE PAPER.—Day shells classified as manufactures of tissue paper at 30 per cent ad valorem under paragraph 323, tariff act of 1913, are claimed dutiable as manufactures of paper at 25 per cent under paragraph 332.

Opinion by FISCHER, G. A. The day shells were held dutiable as manufactures of paper under paragraph 332. G. A. 8492 (T. D. 38952) followed.

No. 44925.—Protest 939957 of A. J. Bracher (New York).

POCKETKNIVES.—The question here is whether certain pocketknives classified under paragraph 128, tariff act of 1913, are valued at more or less than $1 per dozen.

Opinion by FISCHER, G. A. It was found that the knives in question are valued at more than $1 per dozen and the classification was affirmed.

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No. 44926.—Protest 939006 of M. J. Brandenstein & Co. (San Francisco).

PAPER TEA CARTONS—PRINTED MATTER.—Finished cardboard tea containers and pieces of heavy paper or cardboard printed with designs suitable for use in the manufacture of cartons for holding tea were classified as manufactures of paper at 25 per cent ad valorem under paragraph 332, tariff act of 1913. They are claimed dutiable as printed matter at 15 per cent under paragraph 329.

Opinion by FISCHER, G. A. Merchandise invoiced as "Princess" cartons, finished cartons ready for holding tea, were held properly classified under paragraph 332. Pieces of heavy paper or cardboard, each with a tea label printed thereon, which may be intended to be subsequently made into tea containers were held dutiable as printed matter, the printing being the controlling feature and governing the classification. G. A. 8208 (T. D. 37812) followed.

BEFORE BOARD 3, APRIL 25, 1922.

No. 44927.—Protest 941770 of M. J. Corbett & Co. (New York).

PIPE MOUTHPIECES—SMOKERS' ARTICLES.—Mouthpieces for pipes, shaped and bored, composed of amber, classified as smokers' articles at 50 per cent ad valorem under paragraph 381, tariff act of 1913, are claimed dutiable as manufactures of amber at 10 per cent under paragraph 367.

Opinion by HAY, G. A. Amber mouthpieces for pipes were held properly classified as smokers' articles under paragraph 381. United States *v.* Hanover Vulcanite Co. (4 Ct. Cust. Appls. 503; T. D. 33919) followed.

No. 44928.—Protest 941783 of Habicht & Co. (New York).

CHESTNUTS, BAKED AND GROUND.—Merchandise invoiced as sliced chestnuts and reported by the appraiser to be chestnuts, baked and ground, were classified as a nonenumerated manufactured article at 15 per cent ad valorem under paragraph 385, tariff act of 1913, and are claimed free of duty under paragraph 557 as "nuts: marrons, crude," or dutiable at 1 cent per pound under the provision for "nuts of all kinds, shelled or unshelled," in paragraph 226.

Opinion by HAY, G. A. Taking the view that when nuts are baked and ground they cease to be nuts, as wheat or corn when ground ceases to be wheat or corn and becomes flour or meal, the board held neither paragraph 557 nor 226 applicable and affirmed the classification under paragraph 385. Abstract 22592 (T. D. 30294) cited.

BEFORE BOARD 1, APRIL 28, 1922.

No. 44929.—Protest 941953 of Cape Trading Co. (New York).

STIPA GRASS.—Crude and dyed stipa grass, which was classified at 60 per cent ad valorem under paragraph 347, tariff act of 1913, is, among other things, claimed free of duty under paragraph 497.

Opinion by MCCLELLAND, G. A. Crude stipa grass, not dyed but in its natural condition, was held entitled to free entry under paragraph 497. United States *v.* Post (3 Ct. Cust. Appls. 260; T. D. 32568) followed. Stipa grass which had been subjected to a dyeing process was held properly classified under paragraph 347. United States *v.* Gage (8 Ct. Cust. Appls. 306; T. D. 37584) folllowed.

No. 44930.—Protest 939616-63015 of Gallagher & Ascher (Chicago).

ARTIFICIAL FLOWERS.—Stalks upon which are leaves and flowers in imitation of lilies made of metal, classified as artificial flowers at 60 per cent ad valorem under paragraph 347, tariff act of 1913, are claimed dutiable as manufactures of metal at 20 per cent under paragraph 167.

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Opinion by McClelland, G. A. It was found that the flowers in question are used to decorate or ornament statues, in place of natural lilies. On the authority of Bayersdorfer *v.* United States (7 Ct. Cust. Appls. 66; T. D. 36390) they were held properly classified under paragraph 347.

Before Board 2, April 28, 1922.

No. 44931.—Protest 939791 of Wilfred Schade Forwarding Co. (St. Louis).

Textbooks—"Indispensable Orthopedics."—Unbound copies of a book entitled Calot's "Indispensable Orthopedics" were classified as books not specially provided for at 15 per cent ad valorem under paragraph 329, tariff act of 1913, and are claimed entitled to free entry as textbooks under paragraph 426.

Opinion by Fischer. G. A. There was no evidence that the book was primarily intended to be used as a textbook for students. It would seem rather to have been intended for the general practitioner. The claim for free admission under paragraph 426 was therefore overruled.

Before Board 3, April 28, 1922.

No. 44932.—Protests 935628, etc., of John McClellan & Co. (Galveston) and protest 943615 of L. Strauss & Co. (New York).

Embossed Earthenware.—Earthenware classified as decorated at 40 per cent ad valorem under paragraph 79, tariff act of 1913, is claimed dutiable as plain white at only 35 per cent under the same paragraph.

Opinions by Hay, G. A. On the authority of Abstract 42940, affirmed in United States *v.* Mutual China Co. (9 Ct. Cust. Appls. 232; T. D. 38202) and Abstract 43723, affirmed in United States *v.* Todd (11 Ct. Cust. Appls. —; T. D. 38690), embossed earthenware was held dutiable under paragraph 79 at 35 per cent.

No. 44933.—Protest 943421 of Japanese Fan Co. (New York).

Decorated Earthenware.—Merchandise classified as decorated china at 55 per cent ad valorem under paragraph 80, tariff act of 1913, is claimed to be decorated earthenware, dutiable at 40 per cent under paragraph 79.

Opinion by Hay, G. A. The protest was sustained on stipulation of counsel that the merchandise in question is earthenware.

No. 44934.—Protest 942276 of S. Stern (New York).

American Goods Returned—Regulations.—Free entry is here claimed for a fur coat under paragraph 404, tariff act of 1913.

Opinion by Hay, G. A. The regulations not having been complied with, the claim for free entry under paragraph 404 was overruled. G. A. 8295 (T. D. 38168) cited.

No. 44935.—Protests 942187, etc., of J. S. Sembrada & Co. et al. (New York).

Cauchillo—Sande—Crude Gum.—Cauchillo and sande classified as crude chicle by similitude at 15 cents per pound under paragraph 36, tariff act of 1913, are claimed dutiable at 10 per cent under paragraph 385.

Opinion by Hay, G. A. On the authority of G. A. 8334 (T. D. 38382) cauchillo and sande were held dutiable under paragraph 385 as claimed.

No. 44936.—Protest 940195 of Thos. F. Cobbs (San Diego).

Emergency Tariff—Delay in Entry Caused by Strike.—It is claimed here that certain rugs are not subject to the additional duty of 45 cents per pound under paragraph 19 of the emergency tariff act.

Opinion by Hay, G. A. The vessel arrived at San Francisco on or about May 20, 1921, and an immediate transportation entry was made there May 21, but the rugs did not arrive at San Diego until June 7, and entry was filed June 17, the allegation

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being that a strike of the marine engineers caused the delay and prevented entry of the rugs prior to the effective date of the emergency act, May 28, 1921. The protest was overruled. Abstracts 38978 and 44875 and G. A. 8504 (T. D. 39005) cited.

No. 44937.—Protest 938888 of Geo. A. Newhall (San Francisco).

FUR COAT MADE OF AMERICAN SKINS—PERSONAL EFFECTS.—A fur coat classified at 50 per cent ad valorem under paragraph 348, tariff act of 1913, is claimed free of duty as wearing apparel of a resident of the United States returning from abroad under paragraph 642, tariff act of 1913.

Opinion by HAY, G. A. It was found that 40 or more martens were caught in California, and the skins were tanned and dressed and taken abroad, where they were made into a fur coat, the argument being that they were "altered" into a fur coat, and it was held that the protestant could not take one thing abroad and bring back another free of duty under the provisions of paragraph 642. The protest was overruled. G. A. 6381 (T. D. 27421), G. A. 7713 (T. D. 35330), and G. A. 8348 (T. D. 38437) cited.

No. 44938.—Protest 932475 of Geo. S. Bush & Co. (Seattle).

SHIPS' EQUIPMENT—IRON CHAIN.—An iron chain is claimed entitled to free admission as ships' equipment under subsection 5, paragraph J, section 4, tariff act of 1913, its installation having been prevented by seizure by the United States Shipping Board.

Opinion by HAY, G. A. Proof that the chain in question was used for the purpose for which it is alleged it was imported is absent in this case. The protest was therefore overruled.

No. 44939.—Protest 943367 of P. H. Petry Co. (New York).

SHORTAGE.—The importer here seeks to recover duty paid on certain films which were reported short by the discharging inspector and the appraiser.

Opinion by ADAMSON, G. A. On the facts disclosed by the record the protest was sustained.

No. 44940.—Protests 941263, etc., of G. Cella & Bros. et al. (New York).

SHORTAGE.—Recovery of duty is sought here on certain packages on the ground that they were not imported.

Opinion by ADAMSON, G. A. The protests were sustained and refund directed in accordance with the reports of the discharging inspectors.

REHEARING GRANTED.

APRIL 10, 1922.

No. 44941.—GLOVE LEATHER.—Protest 941078 of M. L. Schwartz, decided March 20, 1922. Not reported.

BEFORE BOARD 2, MAY 2, 1922.

No. 44942.—Protest 940594 of Pulp and Paper Trading Co. (New York).

PRINTING PAPER.—The merchandise in question was classified as paper not specially provided for at 25 per cent ad valorem under paragraph 332, tariff act of 1913, and is claimed to be printing paper suitable for printing books, entitled to free admission under paragraph 567 as amended by the act of April 23, 1920.

Opinion by FISCHER, G. A. It was conceded that the paper in question is valued at less than 8 cents per pound, and it was found that it is suitable for use in printing low-priced novels and children's books. The claim for free entry was sustained.

No. 44943.—Protests 937309, etc., of Emden & Wormser et al. and protests 939045, etc., of Steinbrucker & Ladds (New York).

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JACQUARD FIGURED UPHOLSTERY GOODS.—Net or laces classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as Jacquard figured upholstery goods at 35 per cent under paragraph 258.

Opinions by HOWELL, G. A. On the authority of G. A. 8119 (T. D. 37465), affirmed in United States *v.* Mills (8 Ct. Cust. Appls. 422; T. D. 37667), G. A. 8187 (T. D. 37723), and G. A. 8328 (T. D. 38317) the laces and nets in question were held dutiable as Jacquard figured upholstery goods under paragraph 258.

No. 44944.—Protest 942826 of Frank P. Dow Co., Inc. (Seattle).

SANTA CLAUS SACKS—TOYS.—Merchandise invoiced as Santa Claus sacks, consisting of candy bags of netting with Santa Claus heads of celluloid and composition feet, classified as articles in part of netting, is claimed dutiable as toys at 35 per cent under paragraph 342.

Opinion by HOWELL, G. A. The Santa Claus sacks in question were held properly classified under paragraph 358. Abstract 43770 followed.

No. 44945.—Protest 940877 of Blum Co. (New York).

FIGURED COTTON CLOTH.—Merchandise classified as silk veiling at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable as cotton cloth, woven figured, at 30 per cent under paragraph 252.

Opinion by HOWELL, G. A. The merchandise in question was found to be woven figured cotton cloth and held dutiable under paragraph 252 as claimed.

No. 44946.—Protest 940889 of Poirier & Lindeman Co. (New York).

ELASTIC CORD.—Merchandise invoiced as silk cord elastic and classified as silk and india rubber braids at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed properly dutiable as silk and india rubber cord at 45 per cent under paragraph 316.

Opinion by HOWELL, G. A. The merchandise was found to be silk and india rubber cord. The claim under paragraph 316 was therefore sustained.

No. 44947.—Protests 941079, etc., of Reuben S. Cohen et al. (New York).

CELLOPHANE.—Cellophane, which was classified as artificial silk at 35 per cent ad valorem under paragraph 319, tariff act of 1913, is claimed dutiable as a nonenumerated manufactured article at 15 per cent under paragraph 385.

Opinion by HOWELL, G. A. On the authority of G. A. 8459 (T. D. 38816) cellophane was held dutiable under paragraph 385 as claimed.

No. 44948.—Protest 934826-62649 of S. Karpen & Bros. (Chicago).

JUTE WEBBING.—Striped jute webbing, 3½ inches wide, with fast edges, imported in continuous lengths, composed of single jute yarns, with colored stripes running lengthwise, was classified under paragraph 262, tariff act of 1913, at 25 per cent ad valorem, and is claimed dutiable as jute fabrics at 10 per cent under paragraph 279.

Opinion by WELLER, G. A. The collector's action was affirmed and the merchandise held properly classified under paragraph 262. United States *v.* Wertheimer (2 Ct. Cust. Appls. 515; T. D. 32249), G. A. 4435 (T. D. 21115), and G. A. 7217 (T. D. 31565) cited.

BEFORE BOARD 3, MAY 2, 1922.

No. 44949.—Protest 941349 of Ignaz Strauss & Co. (New York).

ENTERED VALUE.—It is claimed here that the cost of ocean freight to New York should not have been included in the dutiable value of certain hats.

Opinion by HAY, G. A. It appeared that the collector assessed duty on the value declared on entry. The protest was therefore overruled.

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No. 44950.—Protest 938404 of Fujita & Allen Co. (San Francisco).

INSECT POWDER.—Insect powder composed of powdered flowers of the pyrethrum plant, classified as a nonenumerated manufactured article at 15 per cent ad valorem under paragraph 385, tariff act of 1913, is claimed dutiable at 10 per cent under paragraph 27.

Opinion by HAY, G. A. On the authority of United States *v.* Nagase (11 Ct. Cust. Appls. —; T. D. 38939) insect powder was held dutiable under paragraph 27 as claimed.

No. 44951.—Protest 945477 of William Bartels Co. (New York).

SHORTAGE.—It is claimed here that duty was paid on 20 monkeys and 1 pouch which were never landed.

Opinion by ADAMSON, G. A. Both the discharging inspector and the appraiser reported the shortage claimed and the protest was sustained.

BEFORE BOARD 3, MAY 4, 1922.

No. 44952.—Protests 936931, etc., of Reliance Fertilizer Co. (Savannah).

RAPE AND CASTOR MEAL—FERTILIZER.—A commodity invoiced as rape and castor meal was classified as a nonenumerated article under paragraph 385, tariff act of 1913, and is claimed free of duty as a substance used only for manure under paragraph 499.

Opinion by HAY, G. A. Although of the opinion that the burden of proving that any given commodity is used only for manure is upon the protestant, the board held that it does not follow that he is to provide testimony that will convince the mind that it is impossible to use the commodity for any other purpose, or that there may not be some theoretical use to which it might be put. From the evidence it was found that there is no other use for this rape and castor meal and it was held to come within the purview of paragraph 499 as a substance used only for manure. G. A. 7257 (T. D. 31800) and G. A. 7946 (T. D. 36589) followed.

BEFORE BOARD 1, MAY 8, 1922.

No. 44953.—Protests 940472, etc., of C. J. Tower & Sons (Buffalo) and protests 938577, etc., of John V. Carr et al. (Detroit).

BROOM HANDLES.—Merchandise invoiced as broom handles and classified at 15 per cent ad valorem under paragraph 176, tariff act of 1913, is claimed free of duty under paragraph 647.

Opinions by MCCLELLAND, G. A. Upon stipulation that the broom handles in question are of the same character as those covered by Abstract 44693, they were held entitled to free entry under paragraph 647.

No. 44954.—Protest 945344 of Antonio Esposito (New York).

UNFINISHED LAMBSKINS.—Unfinished lambskins classified as glove leather at 10 per cent ad valorem under paragraph 359, tariff act of 1913, are claimed free of duty under paragraph 530.

Opinion by MCCLELLAND, G. A. Keshishian *v.* United States (11 Ct. Cust. Appls. —; T. D. 38961) followed, holding unfinished lambskins entitled to free entry under paragraph 530.

No. 44955.—Protests 945563, etc., of Ignaz Strauss & Co. et al., and protests 941761, etc., of Saks & Co. (New York).

AMBER BEADS.—Amber beads loosely strung classified at 35 per cent ad valorem under paragraph 333, tariff act of 1913, are claimed dutiable as semiprecious stones suitable for use in the manufacture of jewelry at 20 per cent under paragraph 357.

Opinions by SULLIVAN, G. A. On the authority of G. A. 8469 (T. D. 38883) the claim that the amber beads in question are dutiable at 20 per cent under paragraph 357 was sustained.

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BEFORE BOARD 2, MAY 8, 1922.

No. 44956.—Protest 939342 of Monroe-Goldkamp Co. (St. Louis).

TEXTBOOKS.—Copies of a book entitled "Cumberbatch's Essentials of Medicinal Electricity" which were classified as books at 15 per cent ad valorem under paragraph 329, tariff act of 1913, are claimed entitled to free entry as textbooks used in schools and other educational institutions under paragraph 426.

Opinion by FISCHER, G. A. On the authority of Abstract 44592 the books in question were held free of duty as textbooks under paragraph 426.

No. 44957.—Protests 938990-62976, etc., of Gallagher & Ascher (Chicago).

RAZORS AND CASES—ENTIRETIES.—Cases for razors are claimed dutiable separately under paragraph 369 or 332, tariff act of 1913, rather than as usual containers at the same rate as the razors.

Opinion by FISCHER, G. A. The razor cases were held properly classified. Abstract 44574 followed.

BEFORE BOARD 3, MAY 8, 1922.

No. 44958.—Protest 944093 of M. De la Rama (New York).

PHILIPPINE PRODUCTS—AMBERGRIS—CERTIFICATE OF ORIGIN.—Ambergris, which was classified at 20 per cent ad valorem under paragraph 49, tariff act of 1913, is claimed entitled to free entry as a product of the Philippine Islands under the provisions of paragraph C, Section IV.

Opinion by HAY, G. A. There is attached to the invoice a certificate of the exporter and the collector of customs to the effect that the ambergris in question is a product of the Philippines, although the appraiser at the port of New York reports that in his opinion it is not the growth, product of, or manufactured in the Philippine Islands. On the theory that the appraiser at the port of New York, whose source of information is not given, must know less as to what is the growth and product of the Philippine Islands than does the collector at the port of Manila, the protest was sustained and the ambergris held entitled to free admission.

No. 44959.—Protests 942586, etc., of Mecke & Co. (New York).

RELIQUIDATION—ADDITIONAL DUTY.—In accordance with a judgment order of the Board of General Appraisers the collector reliquidated entries of gum, assessing duty at 10 per cent under paragraph 385. An advance over the entered value having been made by the appraiser, and no appeal to reappraisement having been taken by the importers, the collector also assessed additional duties, and the validity of the collector's action is challenged.

Opinion by HAY, G. A. It was found that the question of value was not before the board and that the collector complied with the judgment order, and the appraised value exceeding the entered value the provisions of paragraph I, section 3, applied automatically.

BEFORE BOARD 1, MAY 12, 1922.

No. 44960.—Protest 938533 of Leo Shapiro Co. (Minneapolis).

TABLETS—DRUGS—TOILET PREPARATION.—Tablets classified as a toilet preparation at 60 per cent ad valorem under paragraph 48, tariff act of 1913, are claimed dutiable under the proviso to paragraph 17 at 25 per cent.

Opinion by MCCLELLAND, G. A. It was established that the tablets in question contain healing properties. They were therefore held dutiable under paragraph 17 as claimed.

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No. 44961.—Protests 935934, etc., of Gaetano Luciano et al., and protests 936785, etc., of G. Aderente & Figlio et al. (New York).

UNFINISHED LAMBSKINS.—Unfinished lambskins classified as glove leather at 10 per cent ad valorem under paragraph 359, tariff act of 1913, are claimed entitled to free entry under paragraph 530.

Opinions by MCCLELLAND, G. A. The claim for free entry under paragraph 530 of unfinished lambskins was sustained on the authority of Keshishian *v.* United States (11 Ct. Cust. Appls. —; T. D. 38961).

No. 44962.—Protest 944556 of Taylor Instrument Companies (Rochester).

SUFFICIENCY OF PROTEST—STEEL TUBING.—Steel tubing which it is admitted was erroneously returned as glass tubing at 30 per cent ad valorem under paragraph 95, tariff act of 1913, is claimed dutiable as a manufacture of metal at 20 per cent under paragraph 167, while the appraiser reports that it is properly classifiable at 20 per cent under paragraph 127.

Opinion by SULLIVAN, G. A. It being evident that an error was made in the classification, and as it does not appear that the collector was misled by the wrong paragraph number, the protest was held sufficient and the steel tubing in question held dutiable at 20 per cent under paragraph 127. G. A. 8412 (T. D. 38629) followed.

No. 44963.—Protests 945564, etc., of August Stauff et al. (New York).

AMBER BEADS.—Amber beads classified as beads loosely strung at 35 per cent ad valorem under paragraph 333, tariff act of 1913, are claimed dutiable as precious stones suitable for use in the manufacture of jewelry at 20 per cent under paragraph 357.

Opinion by SULLIVAN, G. A. The amber beads in question were held dutiable under paragraph 357 as claimed. G. A. 8469 (T. D. 38883) followed.

No. 44964.—Protests 945562, etc., of Jas. McCreery & Co. et al. (New York).

RUGS.—Rugs made from chenille carpeting are claimed dutiable at 35 per cent ad valorem under paragraph 293, tariff act of 1913, rather than at 50 per cent under paragraph 300.

Opinion by BROWN, G. A. On the authority of United States *v.* Trorlicht (10 Ct. Cust. Appls. 254; T. D. 38618) the rugs in question were held dutiable as chenille carpets under paragraph 293.

BEFORE BOARD 1, MAY 16, 1922.

No. 44965.—Protest 945683 of Cohn & Rosenberger, Inc. (New York).

ROSARIES.—Rosaries in chief value of silver beads, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 50 per cent under paragraph 333.

Opinion by SULLIVAN, G. A. On the authority of United States *v.* American Express Co. (8 Ct. Cust. Appls. 157; T. D. 37286) the rosaries in question were held dutiable at 50 per cent under paragraph 333 as claimed.

BEFORE BOARD 2, MAY 16, 1922.

No. 44966.—Protest 937655 of the Whitaker Paper Co. (Pittsburgh).

VALUE OF NEWSPRINT PAPER.—It is claimed here that the Canadian market value of certain newsprint paper was only 5½ cents per pound on the date of importation, and that it is therefore entitled to free entry.

Opinion by FISCHER, G. A. It was held that the only remedy under the law if the importers were dissatisfied with the appraisement of their merchandise is by appeal to reappraisement. The protest was therefore overruled.

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BEFORE BOARD 3, MAY 16, 1922.

No. 44967.—Protest 943729 of E. Yonan (New York).

HOUSEHOLD EFFECTS.—Oriental rugs assessed for duty at 50 per cent ad valorem under paragraph 300, tariff act of 1913, are claimed entitled to free admission as household effects under paragraph 428.

Opinion by HAY, G. A. It was found that the rugs in question come within the meaning of the phrase household effects, having been used in the home of the protestant in Russia for a great many years. It was held that they should be admitted free of duty under paragraph 428.

No. 44968.—Protests 936391, etc., of C. J. Tower & Sons (Buffalo) and protests 935104, etc., of American Railway Express Co. et al. (Detroit).

COVERINGS OF CREAM CANS.—Canvas covered felt jackets used as coverings for metal cans containing cream were classified as manufactures of cotton at 30 per cent ad valorem under paragraph 266, tariff act of 1913, and are claimed free of duty as usual coverings of free merchandise.

Opinions by HAY, G. A. On the authority of United States *v.* American Railway Express Co. (11 Ct. Cust. Appls. —; T. D. 38968), which affirmed Abstract 44184, the jackets in question were held entitled to free admission as claimed.

No. 44969.—Protests 934824-62620, etc., of Ernest E. Marks Co. (Chicago).

INSECT POWDER.—Insect powder classified at 15 per cent ad valorem under paragraph 385, tariff act of 1913, is claimed dutiable as a drug at 10 per cent under paragraph 27.

Opinion by HAY, G. A. The insect powder in question was held dutiable at 10 per cent under paragraph 27. Abstract 44241, affirmed in United States *v.* Nagase (11 Ct. Cust. Appls. —; T. D. 38939), followed.

No. 44970.—Protest 940942 of J. W. Hampton, jr., & Co. (New York).

SHORTAGE AND EXCESS.—Two shipments of narcissus bulbs arrived on different ships at about the same time and the importer seeks to recover duty paid on certain bulbs which the appraiser reported were found in excess of the invoice quantity.

Opinion by ADAMSON, G. A. It was established by the evidence that on account of examining the bulbs in cases from the wrong shipment duty was erroneously assessed on 250 bulbs in each of the 150 cases, and the protest was accordingly sustained.

BEFORE BOARD 2, MAY 18, 1922.

No. 44971.—Protest 937288-62815 of G. W. Sheldon & Co. (Chicago).

RUBBER SOLES AND HEELS.—Rubber soles and heels made of cotton and india rubber, classified as wearing apparel under paragraph 256, tariff act of 1913, are claimed dutiable as manufactures of india rubber at 10 per cent under paragraph 368.

Opinion by WELLER, G. A. On the authority of G. A. 8445 (T. D. 38763), relating to similar merchandise, the sole and heel attachments in question were held dutiable under paragraph 368 as manufactures of india rubber.

BEFORE BOARD 3, MAY 18, 1922.

No. 44972.—Protest 941223 of Fritzsche Bros. (New York).

SHORTAGE—NONIMPORTATION.—On the ground of nonimportation objection is made to the assessment of duty on certain cassia oil.

Opinion by ADAMSON, G. A. Fifty cases of cassia oil, each case containing four tins, were entered in a bonded warehouse and about a month later it was found that five cases did not contain any oil at all, but were filled with ashes and oats. There is a letter with the papers signed by an inspector which states that all the packages were

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delivered in good order except one, which was recoopered, but that seven of the other packages were stained, apparently by the contents. The protest was sustained as to one case, the board saying that if the contents of the other four packages were abstracted after they were entered in the warehouse the duty is nevertheless due to the Government and that if the loss occurred in the warehouse, and not by reason of fire or other casualty, it is contrary to law to allow remission of duty. (Sec. 2983, Rev. Stat.)

BEFORE BOARD 1, MAY 22, 1922.

No. 44973.—Protest 946274 of Lightolier Co. (New York).

CHAIN FOR USE IN MANUFACTURING JEWELRY.—Chain composed of small balls or beads of brass, each connected loosely to the other by short lengths of brass wire, classified as materials of metal suitable for use in the manufacture of jewelry at 50 per cent ad valorem, under paragraph 356, tariff act of 1913, is claimed dutiable as a manufacture of brass at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. There was evidence that the chain in question is chiefly used for electrical purposes, but that there is also a substantial use of it for jewelry. On the authority of United States *v.* Lorsch (8 Ct. Cust. Appls. 109; T. D. 37222), relating to brass and German-silver foxtail chain, the chain here in question was held properly classified under paragraph 356.

BEFORE BOARD 2, MAY 22, 1922.

No. 44974.—Protest 942847 of P. K. Wilson & Son (New York).

JACQUARD FIGURED UPHOLSTERY GOODS.—Figured cotton laces classified at 60 per cent ad valorem, under paragraph 358, tariff act of 1913, are claimed dutiable as Jacquard figured upholstery goods at 35 per cent under paragraph 258.

Opinion by HOWELL, G. A. On the authority of G. A. 8187 (T. D. 37723) the laces in question which are used wholly or chiefly for making curtains were held dutiable under paragraph 258 as claimed.

No. 44975.—Protests 942114, etc., of Mills & Gibb Corporation (New York).

JACQUARD FIGURED LACE ARTICLES.—Merchandise classified as lace articles at 60 per cent ad valorem under paragraph 358, tariff act of 1913, is claimed dutiable as Jacquard figured upholstery goods at 35 per cent under paragraph 258.

Opinion by HOWELL, G. A. Lace covers and bureau scarfs composed in chief value of Jacquard figured lace, not embroidered, were held dutiable under paragraph 258 as claimed. G. A. 8359 (T. D. 38464) followed.

No. 44976.—Protest 940013-63035 of G. W. Sheldon & Co. (Chicago).

RUBBER SOLE AND HEEL ATTACHMENTS.—Cochrane's rubber sole and heel attachments classified as articles of wearing apparel at 30 per cent ad valorem under the provisions of paragraph 256, tariff act of 1913, are claimed dutiable as manufactures in chief value of india rubber at 10 per cent under paragraph 368.

Opinion by WELLER, G. A. On the authority of Abstract 44145, relating to similar merchandise, the rubber sole and heel attachments in question were held dutiable under paragraph 368 as claimed.

BEFORE BOARD 3, MAY 22, 1922.

No. 44977.—Protest 940930 of Walton N. Moore Dry Goods Co. (San Francisco).

REIMPORTED MERCHANDISE.—A large quantity of mixed merchandise was shipped to Vladivostock, Russia, accompanied by drafts, and the conditions in Russia were such that the consignees could not raise the money and did not take the merchandise

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and it was returned to the United States. Part of it was foreign merchandise upon which duty had once been paid when it was originally imported into this country. The contention of the importer is that having once paid duty upon this merchandise he should not be required to pay it a second time.

Opinion by HAY, G. A. The protest was overruled on the authority of G. A. 4527 (T. D. 21504) and G. A. 8065 (T. D. 37197). Adamson, G. A., concurred.

BEFORE BOARD 2, MAY 26, 1922.

No. 44978.—Protest 944537 of C. J. Tower & Son (Buffalo).

TIN DROSS—BLACK OXIDE OF TIN.—The appraiser describes the merchandise as a waste product known as tin dross. It was classified as metals unwrought at 10 per cent ad valorem under paragraph 154, tariff act of 1913, and is claimed entitled to free entry as black oxide of tin under paragraph 631.

Opinion by FISCHER, G. A. The testimony shows that the commodity in question is produced by heating tin blocks in a kettle until they become molten, when the top is skimmed and the skimmings remelted until the metals are removed, leaving what is known as oxide of tin, which is the imported article. On the authority of G. A. 5179 (T. D. 23872) it was held free of duty as black oxide of tin under paragraph 631.

No. 44979.—Protest 932806 of Ames, Harris, Neville Co. (Portland, Oreg.).

JUTE BAGS, COLORED.—Jute bags which were classified at 35 per cent ad valorem under paragraph 284, tariff act of 1913, are claimed to be made of plain woven fabrics of single jute yarns, dutiable under paragraph 281 at only 10 per cent.

Opinion by WELLER, G. A. An inspection of the official sample showing that there is a colored stripe about 2 inches wide running down the center of the two sides of the bag, they were held properly classified as colored under paragraph 284.

BEFORE BOARD 3, MAY 26, 1922.

No. 44980.—Protest 943550 of F. H. Cone & Co. (New York).

PALMYRA FIBER.—Palmyra fiber is claimed free of duty as a crude vegetable substance under paragraph 497, tariff act of 1913, rather than dutiable as a nonenumerated article at 15 per cent ad valorem under paragraph 385 as classified.

Opinion by HAY, G. A. On the authority of Cone *v.* United States (6 Ct. Cust. Appls. 263; T. D. 35477 and 5 id. 491; T. D. 35149, which affirmed Abstract 36238), the protest was overruled.

BEFORE BOARD 1, MAY 29, 1922.

No. 44981.—Protests 935750, etc., of C. J. Tower & Sons (Buffalo).

GRANULATED CORK.—Granulated cork classified at 30 per cent ad valorem under paragraph 340, tariff act of 1913, is claimed entitled to free admission under paragraph 464.

Opinion by MCCLELLAND, G. A. Interpreting the last provision in paragraph 340 to specifically provide for (1) manufactures wholly or in chief value of cork or of cork bark; (2) manufactures of artificial cork or bark substitutes; and (3) granulated or ground cork; the board held that the granulated cork in question was properly classified thereunder at 30 per cent, and not classifiable under paragraph 464, the commodity being a specially manufactured product.

DISSENTING OPINION.

BROWN, General Appraiser: This suit was brought at the port of Buffalo by protest against the classification of the collector at that port. The merchandise is shown by the sample to be rather finely ground or granulated cork.

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It was classified by the collector at 30 per cent ad valorem under the last clause of paragraph 340 of the tariff act of 1913.

Said paragraph reads as follows:

340. Cork bark, cut into squares, cubes, or quarters, 4 cents per pound; manufactured cork stoppers, over three-fourths of an inch in diameter, measured at the larger end, and manufactured cork disks, wafers, or washers, over three-sixteenths of an inch in thickness, 12 cents per pound; manufactured cork stoppers, three-fourths of an inch or less in diameter, measured at the larger end, and manufactured cork disks, wafers, or washers, three-sixteenths of an inch or less in thickness, 15 cents per pound; cork, artificial, or cork substitutes manufactured from cork waste, or granulated corks, and not otherwise provided for in this section, 3 cents per pound; cork insulation, wholly or in chief value of granulated cork, in slabs, boards, planks, or molded forms, ¼ cent per pound; cork paper, 35 per centum ad valorem; manufactures wholly or in chief value of cork or of cork bark, or of artificial cork or bark substitutes, granulated or ground cork, not specially provided for in this section, 30 per centum ad valorem.

The importer asks for judgment of refund under the claim that it should be properly classified as free of duty under paragraph 464, reading as follows:

464. Cork wood, or cork bark, unmanufactured, and cork waste, shavings, and cork refuse of all kinds—

either directly or by similitude.

The blanket provision at the end of paragraph 340, which paragraph in all its other provisions seems to cover only manufactured articles, can not, it seems to me, be parsed so as to stop in the middle of the sentence at the comma after bark substitutes, and thus disassociate the terms "granulated or ground cork" from the opening words of the sentence reading "manufactures wholly or in chief value of."

It rather seems to refer solely to articles manufactured from any of the materials enumerated therein. Such materials are cork, cork bark, artificial cork, bark substitutes, granulated or ground cork.

Granulated cork itself is not included therein or treated as a manufactured article.

Had it been so intended to treat granulated cork as manufactured it would have been simple and easy to have especially enumerated it in the list of cork articles so treated before the final blanket provision.

Its very inclusion in the blanket clause as one of the primary substances from which the manufactures (not specially provided for) covered by said blanket clause are to be derived indicates a definite purpose to treat it and classify it as *unmanufactured*.

It is classed and associated with cork and cork bark, artificial cork or cork substitutes as the primary substances from which the manufactures covered by that clause are to be made.

Presumably in the two cork paragraphs, 340 and 464, the Congress intended to include all forms of cork, both raw and manufactured. The enumeration of manufactured forms for taxation in paragraph 340 is very comprehensive and carefully discriminates in the amount of duty between different classes and grades of manufactured cork articles, manifestly covering with the blanket concluding clause any kinds of such manufactured cork articles overlooked in the preceding enumeration.

Nowhere does it seem to be intended to include for taxation the material itself *for manufacture* as distinguished from an *article*, and granulated cork seems to be on its face such material. The only apparent exceptions to this are, first, the use of the term "artificial cork," which presumably is not cork at all, and by its name implies a manufacture into the form of cork; and, secondly, "cork substitutes," the latter made, however, from cork waste or granulated corks. These are taxed at 3 cents per pound. But these after all are exceptions more apparent than real and only tend to emphasize the general plan.

Further, if "granulated cork" was being treated and considered as a manufactured article, there was no necessity of mentioning it at all as one of the materials from

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which articles covered by the blanket clause were to be made; for any manufacture of granulated cork would also certainly be a manufacture of cork wood or cork bark.

Therefore, when it was mentioned as material for articles to be taxed under the blanket clause, and at the same time failed of mention in the preceding special enumeration (which did include, however, artificial cork and cork substitutes), granulated cork was necessarily assigned to the unmanufactured class.

Again, the mention in the preceding enumeration itself of a special rate for manufactures of granulated corks strengthens this conclusion. These granulated corks must be, either the article itself again treated as a basis *for manufacture*, the plural being used inadvertently, or else ground up old cork stoppers treated also as a basic unmanufactured material from which manufactures are to be made, and presumably very similar in character to granulated cork itself.

Granulated cork is mentioned (again as a material for manufacture) in the clause covering "cork insulation, wholly or in chief value of granulated cork."

It seems to me that the two cork provisions, as before stated, should be read together as a complete consistent whole intended to cover all cork unmanufactured and manufactured, and as themselves on this plan indicating the division for free entry or for taxation.

The references to granulated cork are as the basis for manufacture only. Moreover, whatever the process required for grinding granulated cork as imported in the sample here, it looks like, and takes the form of, a raw substance to be used for manufacture rather than as a manufactured article itself.

Further, it seems clear that this 30 per cent, if applied by construction of the grammatical arrangement, would apparently tax some of the manufactures made from "granulated cork" at a less rate than "granulated cork" itself, a result presuming against such grammatical construction.

I am, therefore, inclined to the view that the Congress meant by the language used to admit granulated cork free of duty as a material to be included in the term "cork wood" and "cork bark" unmanufactured rather than to include it in the blanket clause at the end of paragraph 464.

No. 44982.—Protests 938545, etc., of Pacific Trading Co. (San Francisco).

SPONGE BALLS—RUBBER BALLS—TOYS—SUFFICIENCY OF PROTEST.—"Sponge balls" classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as manufactures of rubber at 10 per cent under paragraph 368. One protest claimed under paragraph 369.

Opinion by SULLIVAN, G. A. Inasmuch as both the rate and merchandise are correctly stated the protest claiming under paragraph 369 was held sufficient. G. A 8278 (T. D. 38090), G. A. 8412 (T. D. 38629), and Michelin Tire Co. *v.* United States (6 Ct. Cust. Appls. 283; T. D. 35507) cited. The proof showing that the rubber sponge balls in question are not exclusively used by children, and that they are reasonably fitted for the use of adults, they were held dutiable as manufactures of india rubber under paragraph 368 rather than as toys under paragraph 342. Illfelder *v.* United States (1 Ct. Cust. Appls. 111; T. D. 31115) followed.

No. 44983.—Protest 946538 of G. Klein & Son (New York).

ROSARIES.—This protest claims that certain "rosaries, plaquettes, chap., etc.," which were classified at 50 per cent ad valorem under paragraphs 333 and 167 are dutiable at only 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. The protest was submitted on a stipulation that two items consist of rosaries, chief value of metal, and nothing was found in the record to indicate whether the metal therein is base metal, or platinum, gold or silver, or plated with gold or silver. The protest was therefore overruled.

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No. 44984.—Protest 945860 of E. H. Van Ingen & Co. (New York).

FLANNELS.—Merchandise classified at 35 per cent ad valorem under paragraph 288, tariff act of 1913, is claimed dutiable as flannels at 30 per cent under paragraph 289.

Opinion by BROWN, G. A. On the authority of Connor *v.* United States (9 Ct. Cust. Appls. 312; T. D. 38241) the flannels in question were held dutiable under paragraph 289 as claimed.

No. 44985.—Protests 945596, etc., of Neuman & Schwiers Co. et al. (New York).

FISH IN OIL—ANTIPASTO.—Antipasto, which the appraiser reports consists of fish and vegetables in oil, classified at 25 per cent ad valorem under paragraph 216, tariff act of 1913, is claimed dutiable at 15 per cent under paragraph 385.

Opinion by BROWN, G. A. On the authority of Russo *v.* United States (11 Ct. Cust. Appls. —; T. D. 39101) relating to the same commodity, the antipasto in question was held dutiable at 15 per cent under paragraph 385.

No. 44986.—Protests 933767, etc., of Wm. A. Brown & Co. et al. (New York).

GINSENG.—The appraiser reports that the merchandise consists of ginseng root, prepared for medicinal purposes, put up in packages of less than 2½ pounds gross weight. It was classified as a medicinal compound at 20 per cent ad valorem under paragraph 17, tariff act of 1913, and is claimed free of duty under paragraph 477 or 552 or dutiable at 10 per cent under paragraph 27 or 385.

Opinion by BROWN, G. A. Upon stipulation of counsel that the commodity is the same as that the subject of G. A. 8505 (T. D. 39006), the claim that it is dutiable at 10 per cent under paragraph 27 was sustained.

REHEARINGS GRANTED.

MAY 2, 1922.

No. 44987.—EMBROIDERED ARTICLES.—Protests 938858, etc., of Bloomingdale Bros. et al. Abstract 44828.

No. 44988.—EMBROIDERED ARTICLES.—Protests 938621, etc., of Stern Bros. Abstract 44826.

MAY 9, 1922.

No. 44989.—LEGALITY OF REAPPRAISEMENT.—Protest 942767 of E. P. Stahel & Co., decided April 12, 1922. Not reported.

MAY 18, 1922.

No. 44990.—CHEMICAL COMPOUNDS.—Protest 942159 of D. C. Andrews & Co. Abstract 44904.

BEFORE BOARD 1, JUNE 5, 1922.

No. 44991.—Protest 941126 of American Shipping Co. (New York).

RATTAN REEDS.—The appraiser reports that the merchandise consists of Chinese rattan reeds. It was classified at 10 per cent ad valorem under paragraph 173, tariff act of 1913, and is claimed free of duty as reeds unmanufactured under paragraph 648.

Opinion by MCCLELLAND, G. A. On the authority of Peabody *v.* United States (10 Ct. Cust. Appls. 220; T. D. 38562), relating to similar common Chinese reeds, the merchandise in question was held to be free of duty under paragraph 648.

No. 44992.—Protest 941083 of U-Neak Dinner Favors, Inc. (New York).

ARTIFICIAL FRUIT—ONIONS—PUMPKINS—CORN, ETC.—Articles of plaster of Paris, made hollow to be filled with candles, in the forms of a lemon, a pumpkin, a sprouting onion and an ear of corn with a small pumpkin cut in the form of a jack-o'-lantern on

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one end, classified as artificial and ornamental fruit at 60 per cent ad valorem under paragraph 347, tariff act of 1913, are claimed dutiable as manufactures of plaster of Paris under paragraph 369.

Opinion by McClelland, G. A. It was found that the articles in question are not "ornamental," which excludes them from paragraph 347 under Bayersdorfer *v.* United States (7 Ct. Cust. Appls. 66; T. D. 36390), even if it were conceded that they are artificial fruits. They were held dutiable as manufactures of plaster of Paris under paragraph 369.

No. 44993.—Protest 940196 of Burt Wool & Leather Co. (Ogdensburg).

Wool on Lambskins.—Wool on lambskins classified at 15 cents per pound under paragraph 18 of the emergency tariff act is claimed free of duty under paragraph 650, tariff act of 1913.

Opinion by McClelland, G. A. The claim for free entry of wool on lambskins under paragraph 650 was sustained on the authority of G. A. 8540 (T. D. 39155).

No. 44994.—Protests 934804, etc., of Joseph Horne Co. (Pittsburgh).

Axminster Rugs—Wilton Rugs.—Rugs classified at 50 per cent ad valorem under paragraph 300, tariff act of 1913, are claimed dutiable at 35 per cent under paragraph 293 and at 30 per cent under paragraph 294.

Opinion by Brown, G. A. Chenille Axminster rugs were held dutiable at 35 per cent under paragraph 293 and Wilton rugs at 30 per cent under paragraph 294. G. A. 8314 (T. D. 38236) followed.

Before Board 2, June 5, 1922.

No. 44995.—Protests 938930, etc., of R. W. Grauert Co. (New York).

Oeser Foils—Bronze Leaf.—Merchandise invoiced as patent oeser foils, consisting of bronze in the form of leaves used by bookbinders and by the stamping trade classified as bronze in leaf at 25 per cent ad valorem under paragraph 146, tariff act of 1913, is claimed dutiable under paragraph 167, 385, or 5.

Opinion by Fischer, G. A. Oeser foils were held properly classified under paragraph 146. Abstract 27928 (T. D. 32333) followed.

No. 44996.—Protest 940390-63042 of S. Karpen & Bro. (Chicago).

Jute Webbing.—Webbing about 3½ inches in width composed of single jute yarns having several colored threads forming striped borders, classified at 25 per cent ad valorem under paragraph 262, tariff act of 1913, is claimed dutiable at 10 per cent under paragraph 279, or free of duty under paragraph 408.

Opinion by Weller, G. A. From the record no error was found in the assessment. Abstract 44948 noted.

No. 44997.—Protest 940708-63064 of G. W. Sheldon & Co. (Chicago).

Cotton Cloth—Emergency Tariff Act.—This protest is against the assessment of additional duty under paragraph 17 of the emergency tariff act on certain cotton cloth.

Opinion by Weller, G. A. From analyses it was found that the staple is under 1⅛ inches and it was therefore held that the cotton cloth in question is not subject to the additional duty.

Before Board 3, June 5, 1922.

No. 44998.—Protest 945935 of I. Brandon & Bros. (New York).

Shortage.—This protest objects to the payment of duty on certain merchandise reported short by the appraiser.

Opinion by Adamson, G. A. The protest was sustained and refund of duty directed on the articles reported short by the appraiser.

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BEFORE BOARD 2, JUNE 6, 1922.

No. 44999.—Protest 940360 of D. C. Andrews & Co. (New York).

METAL-DRILLING MACHINES—MACHINE TOOLS.—Metal-drilling machines classified at 20 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed dutiable as machine tools at 15 per cent under paragraph 165.

Opinion by FISCHER, G. A. It was established that the machines in question are operated solely by electric power, that they are constructed and designed and exclusively employed to drill holes in metal, and that they are incapable of other use. They were therefore held to be machine tools within the meaning of paragraph 165, their portability having no bearing upon the tariff classification, the definite language of paragraph 165 eliminating any possibility of ambiguity and making plainly manifest the intent of Congress to include "any machine operated by other than hand power which employs a tool for working on metal."

No. 45000.—Protest 942096 and protest 943833 of W. J. Hardy Corp. (New York).

HOSIERY, CLOCKED.—The question here is whether certain hosiery is composed in chief value of silk and dutiable at 60 per cent ad valorem under paragraph 358, tariff act of 1913, as classified, or is composed in chief value of cotton, clocked, dutiable at 50 per cent under paragraph 260.

Opinions by WELLER, G. A. From an analysis of a sample the hosiery in question was found to be cotton chief value. It was therefore held dutiable under paragraph 260 as claimed.

No. 45001.—Protests 943716, etc., of Bloomingdale Bros. et al. (New York).

TAPESTRY—MANUFACTURES OF WOOL.—Pieces of woven cotton or flax canvas stitched with an ornamental design in colored wool are claimed dutiable as manufactures in chief value of wool at 35 per cent ad valorem under paragraph 288, tariff act of 1913, rather than as embroidered articles at 60 per cent under paragraph 358, as classified.

Opinion by WELLER, G. A. United States *v.* Field (10 Ct. Cust. Appls. 183; T. D. 38550), affirming G. A. 8343 (T. D. 38415), followed, holding similar merchandise dutiable as manufactures of wool under paragraph 288.

No. 45002.—Protest 941169–63090 of G. W. Sheldon & Co. (Chicago).

COTTON CLOTH—EMERGENCY TARIFF ACT.—The question in this case is whether certain cotton cloth or articles are subject to additional duty under paragraph 17 of the emergency tariff act.

Opinion by WELLER, G. A. The goods were imported at New York on May 27, 1921, and were transported to Chicago and entered June 10, 1921, while the emergency tariff act became effective May 28, 1921. On the authority of G. A. 8504 (T. D. 39005), holding that the time of entry and not the time of importation should be taken in determining whether merchandise is subject to the emergency tariff, the protest was overruled.

BEFORE BOARD 3, JUNE 6, 1922.

No. 45003.—Protest 940846 of W. R. Grace & Co. (New York).

GAUGE OF OLIVE OIL.—It is claimed here that duty was assessed upon a greater quantity of olive oil than was actually dutiable, the importation consisting in part of denatured olive oil which is free of duty under paragraph 561, tariff act of 1913, and olive oil not denatured which is dutiable under paragraph 45.

Opinion by HAY, G. A. From the admission of the Government it was held that duty should have been taken on 16 barrels under paragraph 45, and that all the other barrels should not have been assessed either because they contained denatured olive oil or were reported empty.

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No. 45004.—Protest 942737 of Winter Bros. (New York).

SHORTAGE.—A refund of duty is claimed on certain beads found short when the unexamined package was opened at the importer's place of business.

Opinion by ADAMSON, G. A. The evidence leaving not only a possibility but a probability that the shortage occurred after the ship landed, the protest was overruled.

BEFORE BOARD 1, JUNE 9, 1922.

No. 45005.—Protest 942433 of P. R. Pincones, jr., Co. (New York).

RAWHIDE LOOM PICKERS.—Loom pickers made of rawhide were classified as manufactures of leather by similitude under paragraph 360, tariff act of 1913, and are claimed dutiable as nonenumerated manufactured articles at 15 per cent under paragraph 385.

Opinion by MCCLELLAND, G. A. On the authority of Abstract 44718 the rawhide loom pickers in question were held dutiable under paragraph 385 as claimed.

No. 45006. Protest 943505 of H. W. Robinson & Co. (New York).

ARTISTS' COLORS.—Small cakes of hard paints set in a porcelain container inclosed in a small cardboard box also containing a small camel's hair brush and handle for the same, classified as toys at 35 per cent ad valorem under paragraph 342, tariff act of 1913, are claimed dutiable as artists' colors at 20 per cent under paragraph 63.

Opinion by SULLIVAN, G. A. The paints in question, which are used in schools for educational purposes, were held dutiable under paragraph 63 as claimed. Illfelder *v.* United States (1 Ct. Cust. Appls. 111; T. D. 31115, and 7 id. 53; T. D. 36311) cited.

No. 45007.—Protests 939536, etc., of Veit, Son & Co. (New York).

LAME AND METAL TRIMMINGS.—Trimmings classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as articles in chief value of metal at 20 per cent under paragraph 167, or as spangled articles at 50 per cent under paragraph 333.

Opinion by SULLIVAN, G. A. Trimmings in chief value of lame were held dutiable under paragraph 167. United States *v.* Veit (8 Ct. Cust. Appls. 290; T. D. 37540), affirming G. A. 8064 (T. D. 37188), followed. Trimmings in chief value of spangles were held dutiable under paragraph 333 as claimed. Loewenthal *v.* United States (6 Ct. Cust. Appls. 209; T. D. 35464) and G. A. 7850 (T. D. 36141), affirmed in United States *v.* Gavin (7 Ct. Cust. Appls. 292; T. D. 36804), cited.

BEFORE BOARD 2, JUNE 9, 1922.

No. 45008.—Protest 939981 of Nippon Yusen Kaisha (Seattle).

PRINTED BLOTTERS—BIBULOUS PAPER.—Printed blotters, one side devoted to an elaborate advertisement, classified as articles manufactured from bibulous paper at 30 per cent ad valorem under paragraph 323, tariff act of 1913, are claimed dutiable as printed matter at 15 per cent under paragraph 329.

Opinion by FISCHER, G. A. The blotters in question were held dutiable as printed matter as claimed under paragraph 329. Abstract 19764 (T. D. 29298) followed.

No. 45009.—Protest 939042 of Davies, Turner & Co. (New York).

BOOKS—"SETS."—The appraiser reports that the merchandise consists of sets of books, each set comprising 40 volumes, part of which were printed more than 20 years before importation, and part less than 20 years. They were returned as entireties and duty was assessed at 15 per cent ad valorem under paragraph 329, tariff act of 1913. It is claimed that each book is a separate entity, and that those printed more than 20 years prior to importation are entitled to free admission under paragraph 425.

Opinion by FISCHER, G. A. It was found that the so-called sets are not the complete works of the author, Robert Louis Stevenson, and it was held that those published

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more than 20 years prior to the date of importation are entitled to free entry under paragraph 425. Abstract 42560 distinguished, as that related to books comprising a complete set.

No. 45010.—Protest 936655 of Simon Ascher & Co. (New York).

WOOL WEARING APPAREL—SHAWLS.—Merchandise invoiced as grey wool shawls and classified as articles in imitation of lace at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as wool wearing apparel at 35 per cent under paragraph 291.

Opinion by HOWELL, G. A. It was found that the shawls are knitted or woven of wool and are not made in imitation of lace. They were held properly dutiable as wool wearing apparel under paragraph 291.

No. 45011.—Protest 942825 of Frank P. Dow Co. (Seattle).

TOYS—LACE ARTICLES.—Merchandise invoiced as toy lace figures was classified as articles in part of lace at 60 per cent under paragraph 358, tariff act of 1913. They are claimed dutiable as toys at 35 per cent under paragraph 342.

Opinion by HOWELL, G. A. From the report of the appraiser it appeared that the merchandise in question should have been classified as toys. The claim under paragraph 342 was therefore sustained.

No. 45012.—Protest 942120 of H. W. Robinson & Co. (New York).

COTTON AND ARTIFICIAL SILK FABRICS.—Woven fabrics composed of cotton and artificial silk were classified at 60 per cent ad valorem under paragraph 319, tariff act of 1913, and are claimed to be composed in chief value of cotton, dutiable at 30 per cent under paragraph 266.

Opinion by HOWELL, G. A. From the report of the analyst it was found that cotton is the component material of chief value. The fabrics in question were therefore held dutiable under paragraph 266.

No. 45013.—Protest 941351 of Meadows, Wye & Co., Inc. (New York).

BEDSPREADS—JACQUARD FIGURED UPHOLSTERY GOODS.—Certain bedspreads, which were classified as manufactures in chief value of silk at 45 per cent ad valorem under paragraph 318, tariff act of 1913, are claimed dutiable as cotton quilts at 25 per cent under paragraph 264, or as manufactures of cotton at 30 per cent under paragraph 266.

Opinion by HOWELL, G. A. The bedspreads in question were found to consist of cotton, Jacquard figured. They were held dutiable at 35 per cent under paragraph 258. G. A. 8328 (T. D. 38317) noted. As this claim was not made, however, the protest was overruled. United States *v.* Park (3 Ct. Cust. Appls. 350; T. D. 32907) cited.

No. 45014.—Protest 941470 of Cohn Bros. (St. Louis).

COTTON MANUFACTURES—LENGTH OF STAPLE.—Certain cotton cloth is claimed not subject to duty at 7 cents per pound under paragraph 17 of the emergency tariff act in addition to the regular duty under paragraph 252 of the tariff act of 1913, on the ground that it is composed of a staple less than 1⅜ inches in length.

Opinion by WELLER, G. A. An analysis of a sample showing the cotton to be of a staple less than 1⅜ inches long, it was held not subject to additional duty under paragraph 17 of the emergency tariff act.

No. 45015.—Protest 941270 of Linen Fabrics Importing Corporation (New York).

FLAX HEMMED HANDKERCHIEFS.—Flax hemmed handkerchiefs classified at 40 per cent ad valorem are claimed dutiable at only 35 per cent under the provisions of paragraph 282, tariff act of 1913.

Opinion by WELLER, G. A. The appraiser admitting that the handkerchiefs were erroneously classified, they were held dutiable at 35 per cent under paragraph 282 as claimed.

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No. 45016.—Protest 945109 of Simon Ascher & Co. (New York).

COTTON LABELS.—Merchandise classified as a manufacture in chief value of cotton at 30 per cent ad valorem under paragraph 266, tariff act of 1913, is claimed to be labels for garments or other articles, dutiable at 25 per cent under paragraph 262.

Opinion by WELLER, G. A. Labels in chief value of cotton were held dutiable under paragraph 262 as claimed.

BEFORE BOARD 3, JUNE 9, 1922.

No. 45017.—Protests 941874, etc., of Geo. Borgfeldt & Co. (New York).

PACKING CHARGES.—The question here is whether an item of packing, stated as 5 per cent on the invoices, should have been included in the dutiable value. It is claimed that this 5 per cent was included in the per se market value of the merchandise, but the collector added it to the per se value of the merchandise as part of the cost of packing which under the statute is made dutiable at the same rate as the contents.

Opinion by HAY, G. A. It was found that the 5 per cent in question is part of the cost of packing the merchandise, but the question whether or not it was covered by the per se value of the merchandise as stated in the invoice is one which would have to be determined upon reappraisement. The protests were overruled.

No. 45018.—Protest 941309 of Bethlehem Shipbuilding Corporation (Philadelphia).

SHIP'S EQUIPMENT—STEAM PUMPING ENGINES—REGULATIONS.—The appraiser described the merchandise as "two complete steam pumping engines to be used as auxiliaries to the propelling machinery of a vessel for pumping the condensed water back to the main boilers." They are claimed free of duty under subsection 5 of paragraph J, section 4, tariff act of 1913.

Opinion by HAY, G. A. It was found that the pumps and engines in question are no more material necessary for the construction of a vessel than were the forced-draft fans and engines in United States *v.* Reid (10 Ct. Cust. Appls. 85; T. D. 38357). The record was found not to be clear as to whether the regulations were complied with. Apparently the inspection was not made by a customs official until after the vessel had made a trip, but it does not appear whether this was the fault of the importer or of the collector. G. A. 7668 (T. D. 35086) noted. It was held that the pumps and engines in question do not come within the purview of subsection 5, paragraph J, section 4, and the protest was overruled.

No. 45019.—Protest 940971 of E. P. Stahel & Co. (New York).

VALIDITY OF REAPPRAISEMENT.—The value placed upon the merchandise in question by the appraiser was sustained and followed in the reappraisement proceeding by the single general appraiser, and his action was sustained and followed by a board of three general appraisers. It is contended that there was no testimony to justify their finding.

Opinion by HAY, G. A. The following is the opinion of the reappraisement board in this case:

The appraiser had evidence upon which to base his finding of value. Very clearly there was behind these findings the exercise of judgment that may only be disturbed upon a preponderance of competent evidence that they were erroneously made. There is no such evidence in the record. For the appellants the only fact that may be said to have been established is that the merchandise delivered by the seller is not of as good quality, or of as high value as the sample submitted by the seller when the contract to purchase was made. This may well have been true but that fact would not by any means establish that the foreign market value of the merchandise actually imported was not that found by the appraiser. There is not a scintilla of evidence tending to show what the foreign market value of the merchandise was except such as is furnished by the evidence on which the appraiser acted and made his findings.

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Distinguishing the Haviland case, G. A. 6655 (T. D 28382), the protest was overruled, with the comment that the reappraisement board opinion seems to quite accurately state the law and to be equally accurate in so far as it undertakes to review the facts.

No. 45020.—Protest 938231 of W. J. Walker (Savannah).

IRON DRUMS—USUAL COVERINGS.—It is claimed here that iron drums containing chloride of zinc which is dutiable at a specific rate under paragraph 52, tariff act of 1913, should be admitted free of duty as usual containers.

Opinion by HAY, G. A. It was found that the iron drums in question are the usual containers in which chloride of zinc is imported and are fit for no other use, having to be destroyed to get the zinc out of them. They were therefore held free of duty as the ordinary containers of merchandise subject to specific duty. Karthaus *v.* Frick (14 Fed. Cas. 136) and G. A. 7175 (T. D. 31332) followed.

No. 45021.—Protest 945134 of G. M. Mayer (New York).

SHORTAGE.—The importer here seeks to recover duty assessed on certain items reported short by the appraiser.

Opinion by ADAMSON, G. A. The discharging inspector reported the package received in bad order, but the first reliable and conclusive examination made and reported after the landing of the merchandise was made by the appraiser. The protest was sustained as to the shortage reported by the appraiser. United States *v.* Lippman (11 Ct. Cust. Appls. —; T. D. 39145) cited.

BEFORE BOARD 1, JUNE 12, 1922.

No. 45022.—Protest 946697 of G. Klein & Son (New York).

BEADS—SEMIPRECIOUS STONES.—Merchandise classified as beads at 35 per cent ad valorem under paragraph 333, tariff act of 1913, is claimed dutiable as semiprecious stones at 20 per cent under paragraph 357.

Opinion by SULLIVAN, G. A. The items invoiced as "Crystall." and "schw. Onix" were found to be semiprecious stones and held dutiable under paragraph 357 as claimed.

No. 45023.—Protest 945399 of Bernard Judae & Co. (New York).

GLASS AMPOULES FOR VACCINE.—Small vials for holding vaccines and serums, termed "ampoules," consisting of clear or white glass without etching or ornamentation of any kind, classified at 45 per cent ad valorem under paragraph 84, tariff act of 1913, are claimed dutiable under paragraph 83, which provides for plain green or colored vials.

Opinion by SULLIVAN, G. A. From an inspection of the samples it was found that these are not plain green or colored vials and are therefore not within paragraph 83 as claimed. Abstract 26537 cited.

No. 45024.—Protest 941071 of J. B. Thompson & Co. (New York) and protest 937689 of A. Murphy & Co. (Philadelphia).

FLANNELS.—It is claimed here that certain flannels are dutiable at 30 per cent ad valorem under paragraph 289, tariff act of 1913, rather than at 35 per cent under paragraph 288.

Opinions by BROWN, G. A. Connor *v.* United States (9 Ct. Cust. Appls. 312; T. D. 38241) followed holding certain flannels dutiable under paragraph 289.

No. 45025.—Protest 939230 of F. B. Vandegrift & Co. (Philadelphia).

RUGS.—Aragona chenille squares and Majestic Axminster rugs and squares are claimed dutiable at 35 per cent ad valorem under paragraph 293, tariff act of 1913, rather than under paragraph 300.

Opinion by BROWN, G. A. The protest was sustained on the authority of G. A. 8314 (T. D. 38236) and the rugs in question held dutiable under paragraph 293 as claimed.

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BEFORE BOARD 3, JUNE 12, 1922.

No. 45026.—Protest 939837 of S. R. Tompkins & Co. (Detroit).

ANIMAL TANKAGE—SUBSTANCES USED FOR MANURE.—Merchandise invoiced as animal tankage with the word "fertilizer" following in parentheses was classified as a nonenumerated manufactured article under paragraph 385, tariff act of 1913, and is claimed free of duty as a substance used only for manure under paragraph 499.

Opinion by HAY, G. A. The evidence showing that the commodity in question, after certain processes, was used in the manufacture of hog feed, it was held not entitled to free admission as a substance used only for manure under paragraph 499. G. A. 7257 (T. D. 31800) and G. A. 7946 (T. D. 36589) followed.

BEFORE BOARD 2, JUNE 13, 1922.

No. 45027.—Protest 936923 of Stix, Baer & Fuller Dry Goods Co. (St. Louis).

DOTTED SWISS—EMBROIDERED FABRICS.—The question here is whether dotted Swiss is dutiable as embroidered at 60 per cent ad valorem under paragraph 358, tariff act of 1913, or as cotton cloth at 20 per cent under paragraph 252.

Opinion by WELLER, G. A. It was found that the goods in question have small dots about one-sixteenth of an inch in diameter and from five-sixteenths to nine-sixteenths of an inch apart formed by the introduction of certain weft threads in the process of weaving the cloth, and that the contention that the goods are not embroidered was sustained. They were held dutiable as cotton cloth under paragraph 252 as claimed.

BEFORE BOARD 3, JUNE 13, 1922.

No. 45028.—Protest 940114 of C. J. Tower & Sons (Buffalo).

CHERRIES PRESERVED.—Pitted cherries in their own juice put up in tin cans, which were classified as cherries in a raw state at 3 cents per pound under paragraph 27 of the emergency tariff act, are claimed dutiable as fruits preserved at 20 per cent ad valorem under paragraph 217, tariff act of 1913.

Opinion by WAITE, G. A. It was stipulated at the hearing that the merchandise is cooked cherries packed in their own juice in hermetically sealed tins of 1 gallon each. The claim under paragraph 217 was therefore sustained. Abstract 44837 cited.

No. 45029.—Protest 936713 of Wakem & McLaughlin (New York).

GRINDSTONES.—The appraiser reports that the merchandise consists of solid cylindrical stones used for polishing brass plates and taking rough edges from printers' cylinders. They were classified as mineral substances wholly or partly manufactured at 20 per cent ad valorem under paragraph 81, tariff act of 1913, and are claimed dutiable as grindstones under paragraph 100 at $1.50 per ton.

Opinion by HAY, G. A. The stones in question apparently being called grindstones by those who use them, which use seems to be for the purpose of grinding certain substances from copper plates used in printing, were held dutiable as grindstones under paragraph 100 as claimed. Abstract 39860 cited.

No. 45030.—Protest 945782 of Habicht & Co. and protest 945565 of L. Strauss & Sons (New York).

EMBOSSED CHINA AND EARTHENWARE.—China and earthenware embossed in the mold classified as decorated is claimed dutiable as plain.

Opinions by HAY, G. A. United States *v.* Mutual China Co. (9 Ct. Cust. Appls. 232; T. D. 38202), affirming Abstract 42940; United States *v.* Todd (11 Ct. Cust. Appls.—; T. D. 38690), affirming Abstract 43723; and Abstract 43801 followed as to china and earthenware embossed in the mold. Protests sustained.

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No. 45031.—Protest 936759 of Geo. S. Bush & Co., Inc. (Seattle).

WHEAT—COUNTERVAILING DUTY.—Wheat imported from Dairen in Kwangtung, Manchuria, is claimed free of duty under paragraph 644, tariff act of 1913, and not dutiable at 10 cents per bushel under the proviso thereto.

Opinion by HAY, G. A. Two letters received in evidence state that during the time covered by this importation all goods imported into Dairen, Manchuria, and the adjacent Kwangtung Leased Territory were admitted free of duty for consumption in that district, but goods shipped out of that territory to either north Manchuria or north China were subject to the usual duty levied by the Chinese maritime customs. Manchuria is a part of China, but some kind of political authority is exercised over the part here in question by Japan through lease, contract, agreement, or otherwise. Kwangtung is a subdivision of Manchuria, and Dairen is in Kwangtung. It was held that, there being no duty charged upon wheat from the United States coming into Dairen, which is a sea port, and into the subdivision of Kwangtung, the restrictions placed upon its further sale after it becomes a part of the commerce of that country can not influence the operation of the proviso of paragraph 644; wheat coming from Kwangtung to the United States is free of duty. G. A. 2826 (T. D. 15477) cited. Sonneborn *v.* United States (1 Ct. Cust. Appls. 443; T. D. 31504) distinguished. G. A. 8193 (T. D. 37746) also cited.

No. 45032.—Protest 946456 of Chas. E. Heymann (New York).

SHORTAGE.—It is claimed here that certain articles were missing from an unexamined package.

Opinion by ADAMSON, G. A. The discharging inspector reports that the package was discharged in good order and the claim of nonimportation was not sustained. The protest was therefore overruled.

No. 45033.—Protest 945611 of P. C. Kuyper & Co. (New York).

SHORTAGE.—A shortage of beads is claimed in this case.

Opinion by ADAMSON, G. A. The package was unexamined and discharged by the inspector in apparent good order. Nothing appears in the record in support of the claim, the only notice of the alleged shortage being in the form of an affidavit filed 10 days after the discovery, which was too late under the regulations. The protest was overruled.

No. 45034.—Protest 944382 of L. Gandolfi & Co. (New York).

SHORTAGE.—This protest relates generally to "merchandise not found, was not imported, or was reported by the appraiser as not contained in the packages."

Opinion by ADAMSON, G. A. Nothing was reported short by the appraiser. The discharging inspector reported certain shortages which were allowed by the collector. As all established shortage appears to have been allowed, the protest was overruled.

No. 45035.—Protest 942754 of Manuel Draz (New York).

CLERICAL ERROR.—Relief is claimed here from the payment of an excessive amount of duty on the ground of manifest clerical error, and also on the ground that duty was assessed on a larger amount of merchandise than was imported and at a greater valuation than was proper. Entry was made on a pro forma invoice.

Opinion by ADAMSON, G. A. It was found manifest that the broker figured 2/12 dozen towels, which item occurred a large number of times, as two full dozen and estimated the total value accordingly. From a comparison of the pro forma invoice, the consular invoice, and the entry, it was found that there was a manifest clerical error and the protest was accordingly sustained. Western Bag Co. *v.* United States (11 Ct. Cust. Appls. —; T. D. 38988) cited.

No. 45036.—Protest 941918 of John J. Lyons (Boston).

WEIGHT OF WOOL.—It is claimed here that duty was assessed on excessive weight of wool on account of moisture.

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Opinion by ADAMSON, G. A. No evidence having been offered that contradicted the Government weights of the wool in question, the protest was overruled.

BEFORE BOARD 1, JUNE 16, 1922.

No. 45037.—Protest 948497 of Hensel, Bruckmann & Lorbacher (New York).

RAWHIDE LOOM PICKERS.—Loom pickers made of rawhide classified as manufactures of leather by similitude at 30 per cent ad valorem under paragraph 360, tariff act of 1913, are claimed dutiable as nonenumerated manufactured articles at 15 per cent under paragraph 385.

Opinion by MCCLELLAND, G. A. On the authority of Abstract 44718 rawhide loom pickers were held dutiable under paragraph 385 as claimed.

No. 45038.—Protest 948487 of Horwitz & Arbib and protest 947275 of S. Stern (New York).

LAMBSKINS UNFINISHED.—Unfinished lambskins classified as glove leather at 10 per cent ad valorem under paragraph 359, tariff act of 1913, are claimed free of duty as leather not specially provided for under paragraph 530.

Opinions by MCCLELLAND, G.A. Keshishian *v.* United States (11 Ct. Cust. Appls. —; T. D. 38961), followed holding unfinished lambskins free of duty under paragraph 530.

No. 45039.—Protest 947750 of Nathan Novelty Manufacturing Co. (New York).

HORN STRIPS.—Horn strips classified at 20 per cent ad valorem under paragraph 368, tariff act of 1913, are claimed free of duty as horn strips unmanufactured under paragraph 511.

Opinion by MCCLELLAND, G. A. The horn strips in question were held entitled to free entry under paragraph 511. United States *v.* Brandt (11 Ct. Cust. Appls. —; T. D. 39082), affirming Abstract 44344, followed.

No. 45040.—Protest 942898 of Max Meuer & Sons (New York).

STIPA GRASS.—Stipa grass classified at 60 per cent ad valorem under paragraph 347, tariff act of 1913, is claimed to be in its natural state, and therefore entitled to free entry under paragraph 497.

Opinion by MCCLELLAND, G. A. It was found that at the time of importation the stipa grass in question was in its natural state. Therefore it was held free of duty under paragraph 497.

No. 45041.—Protest 941383 of C. J. Tower & Sons (Buffalo) and protests 936669, etc., of United Railways Customs Bureau et al. (Duluth and St. Albans).

BROOM HANDLES.—Broom handles which were classified at 15 per cent ad valorem under paragraph 176, tariff act of 1913, are claimed to be entitled to free admission under paragraph 647.

Opinions by MCCLELLAND, G. A. From the records it was found that the broom handles in question are similar to those passed on in Abstract 44693. They were therefore held free of duty under paragraph 647.

No. 45042.—Protest 945259 of Geo. Borgfeldt & Co., protest 947181 of La Aida Pearl Co., protest 947677 of Leonhardt & Brush, and protest 947268 of Ignaz Strauss & Co. (New York).

AMBER ARTICLES.—Amber pendants, beads, and clasps, which were classified as jewelry at 60 per cent ad valorem, under paragraph 356, tariff act of 1913, or as beads loosely strung at 35 per cent under paragraph 333, are claimed dutiable as precious stones suitable for use in the manufacture of jewelry at 20 per cent under paragraph 357.

Opinions by SULLIVAN, G. A. The amber articles in question were held dutiable under paragraph 357 as claimed. G. A. 8469 (T. D. 38883) followed.

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No. 45043.—Protest 943473 of H. Galland & Co. and protest 947704 of Lippmann, Spier & Hahn (New York).

GALALITH ARTICLES.—Galalith belts, necklaces, and pendants, classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as nonenumerated manufactured articles, at 15 per cent under paragraph 385.

Opinions by SULLIVAN, G. A. From the amended reports of the appraiser, belts, necklaces, and pendants in chief value of galalith were held dutiable under paragraph 385 as claimed. Abstracts 43958, 44071, and 44230 cited.

No. 45044.—Protest 944925 of Theo. L Stern & Co. (New York).

BEADS LOOSELY STRUNG.—Beads loosely strung on flimsy cotton strings without clasps, classified at 50 per cent ad valorem are claimed dutiable at only 35 per cent under the provisions of paragraph 333.

Opinion by SULLIVAN, G. A. Certain items found to be temporarily strung were held dutiable at only 35 per cent under paragraph 333 as claimed.

BEFORE BOARD 2, JUNE 16, 1922.

No. 45045.—Protests 944332, etc., of Rothbaum & Leinwand (New York).

UPHOLSTERERS' NAILS.—So-called upholsterers' nails, classified as manufactures of metal at 20 per cent ad valorem under paragraph 167, tariff act of 1913, are claimed entitled to free entry under paragraph 554 which provides for iron or steel nails of various descriptions.

Opinion by FISCHER, G. A. The appraiser states that the nails are composed of steel dipped in brass, but there was no proof offered to show whether the steel or the brass plating is the more valuable. The protest was therefore overruled. Abstract 39357 followed.

No. 45046.—Protest 942435 of Bernard Judae & Co. (New York).

BEADED AND SPANGLED ARTICLES—SUFFICIENCY OF PROTEST.—This protest is against the assessment of duty at 60 per cent ad valorem on merchandise invoiced as silk nets with beads and spangles and the appraiser reports that there is no merchandise described on the invoice as silk nets, but that the merchandise classified as embroidered articles at 60 per cent under paragraph 358, tariff act of 1913, consists of scarfs composed of silk, embroidered. The importers claim under paragraph 333 at 50 per cent.

Opinion by HOWELL, G. A. The merchandise in question, though suitable for use, when hemmed, as scarfs, is imported solely to be used for panels for ladies' dresses. It is made of silk netting ornamented by having beads and spangles sewed thereon. The protest was held sufficient and the claim that it is properly dutiable at 50 per cent under paragraph 333 was sustained. Loewenthal *v.* United States (6 Ct. Cust. Appls. 209; T. D. 35464) and United States *v.* Gavin (7 Ct. Cust. Appls. 292; T. D. 36804) noted.

No. 45047.—Protest 940161 of G. W. Sheldon & Co. (New York).

COTTON CLOTH.—Cotton cloth classified as bleached or colored at 15 per cent ad valorem under paragraph 252, tariff act of 1913, is claimed not bleached or colored, dutiable at only 12½ per cent under the same paragraph.

Opinion by WELLER, G. A. The evidence supporting the claim, the cotton cloth in question was held dutiable at 12½ per cent under paragraph 252.

No. 45048.—Protest 945622 of Kain Bros., Inc. (New York).

FLAX ARTICLES.—Merchandise classified as articles composed in chief value of flax at 35 per cent ad valorem under paragraph 284, tariff act of 1913, is claimed dutiable as plain woven fabrics in chief value of flax under paragraph 283.

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Opinion by WELLER, G. A. The merchandise was found to consist of finished towels, cut to length and hemmed at both ends. It was therefore held properly classified as woven articles in chief value of flax under paragraph 284.

No. 45049.—Protest 944530 of A. G. Spalding & Bros. (New York).

SOLE AND HEEL ATTACHMENTS.—Sole and heel attachments composed of cotton and India rubber with nails or pegs for fastening to shoes, classified as cotton and India rubber wearing apparel at 30 per cent ad valorem under paragraph 256, tariff act of 1913, are claimed dutiable as manufactures in chief value of India rubber at 10 per cent under paragraph 368.

Opinion by WELLER, G. A. On the authority of G. A. 8445 (T. D. 38763) the sole and heel attachments in question were held dutiable under paragraph 368 as claimed.

BEFORE BOARD 3, JUNE 16, 1922.

No. 45050.—Protest 942748 of Hudson Forwarding & Shipping Co. (New York).

ARTISTIC ANTIQUITIES.—A glass chandelier, candlesticks, and other articles are claimed free of duty as artistic antiquities under paragraph 656, tariff act of 1913.

Opinion by WAITE, G. A. In accordance with stipulation of counsel that certain items consist of artistic antiquities over 100 years old at the time of importation, the claim for free entry under paragraph 656 was sustained to that extent.

No. 45051.—Protest 941266 of F. W. Myers & Co. (Detroit).

CHERRIES, PRESERVED.—Merchandise invoiced as pitted cherries classified as cherries in a raw state at 3 cents per pound under paragraph 27, emergency tariff act, are claimed dutiable at 20 per cent under paragraph 217, tariff act of 1913.

Opinion by WAITE, G. A. Cherries in a sweet syrup, cooked, were held dutiable under paragraph 217, tariff act of 1913. Abstract 44837 followed.

No. 45052.—Protest 940251 of Wo Kee & Co. (San Francisco).

AGARIC—MUSHROOMS.—A commodity invoiced as agaric was classified as prepared vegetables at 25 per cent ad valorem under paragraph 200, tariff act of 1913, and is admitted by the appraiser to be properly dutiable as mushrooms at 2½ cents per pound under paragraph 199.

Opinion by WAITE, G. A. The protest was overruled for the reason that the correct claim was not made and the importer is confined to the claim in his protest. United States *v.* Troy Laundry Machinery Co. (5 Ct. Cust. Appls. 430; T. D. 34947) cited.

No. 45053.—Protest 937127 of Cream of Wheat Co. (Minneapolis).

AMERICAN BAGS—REGULATIONS.—Empty sacks from Canada, classified at 10 per cent ad valorem under paragraph 281, tariff act of 1913, are claimed to be of American manufacture and entitled to free entry under paragraph 404.

Opinion by HAY, G. A. The regulations not having been complied with, the protest was overruled. G. A. 7713 (T. D. 35330), G. A. 7957 (T. D. 36655), G. A. 8295 (T. D. 38168), and G. A. 8348 (T. D. 38437) cited.

No. 45054.—Protest 936967 of The Weideman Co. (Cleveland).

CUBAN SUGAR FROM CANADA.—Sugar imported from Canada and classified under paragraph 177, tariff act of 1913, is claimed entitled to a reduction in duty of 20 per cent under the provisions of the Cuban reciprocity treaty.

Opinion by HAY, G. A. It was found that the merchandise imported from Canada was not the merchandise which was the product of Cuba, which was raw sugar. It was converted in Canada into refined sugar. On the authority of G. A. 7529 (T. D. 34125), the protest was overruled.

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No. 45055.—Protests 934350, etc., of C. J. Tower & Sons (Buffalo).

WHEAT SCREENINGS.—A mixture of wheat, oats, barley, weed seed, chaff, dirt, etc., which was classified as a nonenumerated article under paragraph 385, tariff act of 1913, is claimed free of duty as wheat under paragraph 644. The appraiser reports the percentage of wheat as ranging from 38.25 to 73.40.

Opinion by HAY, G. A. It was found that the evidence did not overcome the presumption in favor of the correctness of the classification and the protests were overruled.

No. 45056.—Protest 943028 of A. J. Macksoud (New York).

BREAKAGE—DAMAGE.—Protest is here made against the payment of duty on 243 phonograph records examined at the appraiser's stores and found broken.

Opinion by ADAMSON, G. A. The merchandise can not be considered as perishable and no effort was made to abandon it to the Government. The protest was therefore overruled, such an allowance being prohibited by paragraph X, Section III, tariff act of 1913.

No. 45057.—Protest 940366 of Gerhard & Hey (New York).

SHORTAGE.—A shortage of opium is claimed in this case. The consignment was sent to the appraiser's stores under the supervision of a customs guard. The appraiser reported the packages referred to in bad order with certain shortages.

Opinion by ADAMSON, G. A. The protest was sustained as to the items reported short by the appraiser, there being no evidence of interference with the merchandise after landing.

BEFORE BOARD 1, JUNE 20, 1922.

No. 45058.—Protests 937290, etc., of Neiman-Marcus Co. et al. (Galveston), protest 944241 of Joseph (Inc.), and protest 948440 of Veit, Son & Co. (New York).

GALALITH ARTICLES.—Necklaces, bracelets, pins, ornaments, and hatpin tops of galalith, classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, or as beaded articles at 50 per cent under paragraph 333, are claimed dutiable at 15 per cent under paragraph 385, or under paragraph 333.

Opinions by SULLIVAN, G. A. Articles composed in chief value of galalith were held dutiable at 15 per cent under paragraph 385. Articles in chief value of beads were held dutiable at 50 per cent under paragraph 333.

No. 45059.—Protest 949198 of Veit, Son & Co. (New York).

IMITATION JET ORNAMENTS—BLACK GLASS.—Imitation jet ornaments classified as articles in chief value of colored glass, cut, at 45 per cent ad valorem under paragraph 84, tariff act of 1913, are claimed dutiable as manufactures of glass or paste at 30 per cent under paragraph 95.

Opinion by SULLIVAN, G. A. The ornaments in question were held properly classified as articles in chief value of colored glass under paragraph 84. G. A. 8486 (T. D. 38929), where black was held to be a color, followed.

No. 45060.—Protest 948483 of M. Gugenheim (Inc.), and protest 948448 of Leonhardt & Brush (New York).

SEMIPRECIOUS STONES.—Beads of semiprecious stones, classified at 35 per cent ad valorem under paragraph 333, tariff act of 1913, are claimed dutiable at 20 per cent under paragraph 357.

Opinions by SULLIVAN, G. A. On the authority of G. A. 8469 (T. D. 38883) the beads in question were held dutiable as semiprecious stones suitable for use in the manufacture of jewelry under paragraph 357.

No. 45061.—Protest 941728 of American Bead Co., protests 947264, etc., of Borelli & Vitelli et al., protests 947688, etc., of M. Gugenheim (Inc.), and protest 947685 of Victor Co. (New York).

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AMBER BEADS.—Amber beads classified at 35 per cent ad valorem under paragraph 333, tariff act of 1913, are claimed dutiable at 20 per cent under paragraph 357.

Opinions by SULLIVAN, G. A. The amber beads in question were held dutiable as precious stones cut but not set under paragraph 357. G. A. 8169 (T. D. 38883) followed.

BEFORE BOARD 3, JUNE 20, 1922.

No. 45062.—Protest 939521 of Ghisi & Berry (Los Angeles).

STATUES—WORKS OF ART.—Two statues of bronze and ivory and one of marble are claimed dutiable as works of art at 15 per cent ad valorem under paragraph 376, tariff act of 1913, rather than under paragraph 167 at 20 per cent. The collector reported the artist's affidavit was not produced.

Opinion by WAITE, G. A. The examiner testified that the statues were works of art in his opinion, being signed by the artist, Colinet. They were held dutiable under paragraph 376. G. A. 8277 (T. D. 38089) cited.

No. 45063.—Protest 939618 of National Zinc Co. (St. Louis).

FEE UPON CANCELLATION OF BOND.—Here the collector exacted a fee of $2.50 upon the cancellation of certain bonds given for the production of a consular invoice, citing article 1001, Customs Regulations of 1915, as amended by T. D. 38540, as authority.

Opinion by HAY, G. A. Holding that the Secretary of the Treasury has no power to authorize the exaction of a fee or charge of any kind not authorized by law, the board sustained the protest. G. A. 5689 (T. D. 25331) and G. A. 6005 (T. D. 26244) cited.

No. 45064.—Protests 938725, etc., of W. Carlyle Wallace (New York).

SHIPS' EQUIPMENT—REGULATIONS.—Certain piston rings are claimed free of duty as ships' equipment. It appears that no notice of installation was given to the collector. Relief from this failure to notify the collector is sought on the ground of ignorance of the law, and there is also some intimation of the impossibility of giving notice as some of the piston rings were installed at sea.

Opinion by HAY, G. A. Ignorance of the law not being an excuse for failure to comply with the same, and the question of impossibility not clearly appearing, the protests were overruled, it having been held that these regulations must be strictly complied with. G. A. 7668 (T. D. 35086) and G. A. 8083 (T. D. 37295) cited.

BEFORE BOARD 1, JUNE 22, 1922.

No. 45065.—Protest 941655-62974 of Shavings & Sawdust Co. (Chicago).

SHAVINGS—WASTE.—Baled shavings classified as manufactures of chip at 20 per cent ad valorem under paragraph 368, tariff act of 1913, are claimed free of duty under the provision for shavings in paragraph 566.

Opinion by MCCLELLAND, G. A. It appeared that these shavings are used to cover new concrete walks and for bedding stock in place of straw. Because of their use for purposes other than for paper making they were held to be excluded from paragraph 566. The appraiser says that they should have been classified as waste at 10 per cent under paragraph 384. As this claim was not made the protest was overruled. Brown, G. A., dissented.

No. 45066.—Protests 939040, etc., of Alpha-Lux Co., Inc. (New York).

OXIDE OF IRON.—Oxide of iron classified at 10 per cent ad valorem under paragraph 55, tariff act of 1913, is claimed entitled to free entry under paragraph 518.

Opinion by MCCLELLAND, G. A. From the evidence the protest was sustained and the oxide of iron held free of duty under paragraph 518.

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No. 45067.—Protest 938089 of the Rigney Tile Co. (San Francisco).

TILES.—Tiles classified as semivitrified at 5 cents per square foot under paragraph 72, tariff act of 1913, are claimed to be plain unglazed, subject to duty at only 1½ cents per square foot under the same paragraph.

Opinion by MCCLELLAND, G. A. It was found that the tiles in question are made in England where they are not known as semivitrified, but that they are the same as tiles known as semivitrified in this country. Protest overruled. Schroeder *v.* United States (156 Fed. 957), Shannon *v.* United States (11 Ct. Cust. Appls. —; T. D. 38635), and United States *v.* Vandegrift (7 id. 77; T. D. 36392) cited.

No. 45068.—Protest 797875 of St. Louis Car Co. (St. Louis).

RATTAN REEDS.—Manufactured rattan reeds classified at 10 per cent ad valorem under paragraph 173, tariff act of 1913, are claimed free of duty under paragraph 552, 647, or 648.

Opinion by MCCLELLAND, G. A. Nothing was found in the record as to whether the reeds in question are common, selected, or extra selected, and an inspection of the sample seems to confirm the return of the appraiser on the invoice as "chair cane." In Peabody *v.* United States (10 Ct. Cust. Appls. 220; T. D. 38562) common reeds not chiefly used for making chairs were held entitled to free entry under paragraph 648, but selected and extra selected were held dutiable as assessed. On the record the protest was overruled.

BROWN, G. A., concurred on the ground that there is nothing to show the use.

No. 45069.—Protest 947687 of American Express Co. (New York).

AMBER BEADS.—It is claimed here that amber beads which were classified at 35 per cent ad valorem under paragraph 333, tariff act of 1913, are dutiable as precious stones suitable for use in the manufacture of jewelry at 20 per cent under paragraph 357.

Opinion by SULLIVAN, G. A. On the amended report of the appraiser the amber beads in question were held dutiable under paragraph 357 as claimed. G. A. 8469 (T. D. 38883) followed.

No. 45070.—Protest 949352 of F. W. Woolworth Co. (New York).

WHISTLES—TOYS.—Merchandise classified as lead toys at 35 per cent ad valorem under paragraph 167, tariff act of 1913, is claimed to be metal whistles, articles of utility, dutiable at 20 per cent under paragraph 167.

Opinion by SULLIVAN, G. A. On the amended report of the appraiser the whistles in question were held dutiable as manufactures of metal under paragraph 167 as claimed.

No. 45071.—Protests 943483, etc., of Ford of France (New York).

BOTTLE CONTAINING PERFUMERY.—The merchandise consists of a small glass bottle containing perfumery. The bottle, which is inclosed in a silk bag, is flat, almost circular in shape, and has a short neck in which is fitted an ornamental glass stopper, elongated into a point which extends about two-thirds of the way into the bottle, permitting its use as a dropper. The edges of the two sides of the bottle are ornamented with a raised pattern in the form of a rope. It was assessed with duty at the same rate as its contents under paragraph 48, tariff act of 1913, and is claimed to be separately dutiable at 45 per cent ad valorem under paragraph 84, and not within the meaning of paragraph 83.

Opinion by SULLIVAN, G. A. The decoration on the bottle and the fancy stopper were found sufficient to bring the bottle in question within the provisions of paragraph 84, being presumptively of a character ordinarily employed as containers for holding or transporting perfumery, and the protest was sustained. G. A. 8506 (T. D. 39009) cited.

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No. 45072.—Protest 944013 of Borelli & Vitelli (New York).

GALALITH ARTICLES.—So-called colliers consisting of necklaces composed of a black pendant, yellow beads, and irregularly shaped drop-like beads of a hard, black material, all connected with chains and rings of white metal, and having attached an ornament in the shape of a bird with spread wings composed of a hard black material, were classified as jewelry at 60 per cent ad valorem under paragraph 357, tariff act of 1913, and are claimed dutiable under paragraph 385, 167, or 333.

Opinion by SULLIVAN, G. A. The appraiser reports that the galalith beads and strips are of greater value than the metal portion and the evidence shows that the black pieces of galalith are of greater value than the beads, but the record does not show whether the black pieces of galalith are more valuable than the metal chains and rings, nor whether the chains are silver plated. The protest was therefore overruled.

BEFORE BOARD 3, JUNE 22, 1922.

No. 45073.—Protest 943359 of Chas. Baez (New York).

WEIGHT OF LITHO PRINTS.—It is claimed here that duty should be assessed on the net weight of certain lithographically printed cards, rather than on the gross weight.

Opinion by ADAMSON, G. A. The appraiser reports that the actual net weight of the cards was not ascertained, but the weights stated on the invoice were believed to be correct, which were the gross weights as shown by the testimony. The protest was sustained in accordance with the net weights ascertained by the examiner of samples produced at the trial.

BEFORE BOARD 1, JUNE 26, 1922.

No. 45074.—Protest 948451 of Emrich & Schorsch (New York).

STEEL RINGS FOR HANDBAGS.—The appraiser reports that the merchandise is small steel rings used in the manufacture of handbags, etc. It was classified at 60 per cent ad valorem under paragraph 356, tariff act of 1913, and should have been returned as a manufacture of metal at 20 per cent under paragraph 167 according to the amended report of the appraiser.

Opinion by SULLIVAN, G. A. The steel rings in question were held dutiable under paragraph 167 as claimed.

No. 45075.—Protest 943487 of M. Fertig (New York).

GALALITH BRACELETS.—Bracelets composed of galalith which were classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable at 15 per cent under paragraph 385.

Opinion by SULLIVAN, G. A. Bracelets composed of galalith were held dutiable under paragraph 385. Abstract 44071 followed.

No. 45076.—Protest 938137 of Geo. Borgfeldt & Co. (Philadelphia).

READING GLASSES—KEWPIES—PINS.—Reading glasses classified as optical instruments at 30 per cent ad valorem under paragraph 93, tariff act of 1913, are claimed dutiable at 25 per cent under paragraph 94. Kewpies classified as decorated china at 55 per cent under paragraph 80, are claimed dutiable as dolls at 35 per cent under paragraph 342. Pins classified at 30 per cent under paragraph 95 are claimed dutiable at 15 per cent under paragraph 114.

Opinion by SULLIVAN, G. A. The merchandise in question was held dutiable as follows: (1) Reading glasses at 25 per cent under paragraph 94, (2) kewpies at 35 per cent under paragraph 342, and pins at 30 per cent under paragraph 95. Abstracts 41111, 42321, 39570, 41431, 41722, 42100, and 43225 followed.

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No. 45077.—Protest 946283 of Pfaltz & Bauer, Inc., (New York).

PHOSPHORIC ACID, ANHYDROUS.—It is claimed here that certain phosphoric acid anhydrous is free of duty under paragraph 387, tariff act of 1913, rather than dutiable at 15 per cent under paragraph 1, as classified.

Opinion by BROWN, G. A. Upon stipulation of counsel merchandise invoiced as phosphoric acid anhydrous was held free of duty under parargaph 387. Abstract 38539 followed.

No. 45078.—Protests 947194, etc., of B. Altman & Co. (New York).

RUGS.—Rugs made from chenille carpeting, classified at 50 per cent ad valorem under paragraph 300, tariff act of 1913, are claimed dutiable at 35 per cent under paragraph 293.

Opinion by BROWN, G. A. On the authority of United States *v.* Trorlicht (10 Ct. Cust. Appls. 254; T. D. 38618) the rugs in question were held dutiable under paragraph 293.

No. 45079.—Protest 947207 of C. A. Haynes & Co. and protest 943705 of Milbank Leaman & Co. (New York).

FLANNELS.—Flannels classified at 35 per cent ad valorem under paragraph 288, tariff act of 1913, are claimed dutiable at 30 per cent under paragraph 289.

Opinions by BROWN, G. A. On the authority of Connor *v.* United States (9 Ct. Cust. Appls. 312; T. D. 38241) the protests were sustained.

BEFORE BOARD 2, JUNE 26, 1922.

No. 45080.—Protest 938602 of Italian Bed Spread Co. (New York).

COTTON TOWELS—JACQUARD FIGURED UPHOLSTERY GOODS.—Merchandise classified as Jacquard figured upholstery goods at 35 per cent ad valorem under paragraph 258, tariff act of 1913, is claimed dutiable as cotton towels at 25 per cent under paragraph 264.

Opinion by WELLER, G. A. The cotton towels in question were held dutiable under paragraph 264 as claimed.

BEFORE BOARD 1, JUNE 28, 1922.

No. 45081.—Protest 943952 of R. H. Macy & Co. (New York).

GALALITH BRACELETS.—Galalith bracelets classified as jewelry at 60 per cent ad valorem under paragraph 356, tariff act of 1913, are claimed dutiable as nonenumerated manufactured articles under paragraph 385.

Opinion by SULLIVAN, G. A. On the amended report of the appraiser the galalith bracelets in question were held dutiable at 15 per cent under paragraph 385.

No. 45082.—Protest 942941 of Leo Popper & Sons (New York).

UNPOLISHED CYLINDER GLASS.—Unpolished cylinder glass, colored, is claimed dutiable at only 1⅛ or 1½ cents per pound rather than at 2 cents per pound under the provisions of paragraph 85, tariff act of 1913.

Opinion by SULLIVAN, G. A. The glass was found not to exceed 1,200 square inches, and it was therefore held properly dutiable at 1½ cents per pound under paragraph 85 and 4 per cent additional for being colored under paragraph 90.

No. 45083.—Protest 940855 of J. J. Gavin & Co. (New York).

RUGS.—Axminster chenille rugs classified at 50 per cent ad valorem under paragraph 300, tariff act of 1913, are claimed dutiable at 35 per cent under paragraph 293.

Opinion by BROWN, G. A. Axminster chenille rugs were held dutiable at 35 per cent under paragraph 293. G. A. 8314 (T. D. 38236) followed.

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No. 45084.—Protests 947661, etc., of Baruch Wolff & Co. (New York).

FLANNELS.—Merchandise classified as wool cloth at 35 per cent ad valorem under paragraph 288, tariff act of 1913, is claimed dutiable as flannels at 30 per cent under paragraph 289.

Opinion by BROWN, G. A. On the report of the appraiser the claim under paragraph 289 was sustained as to certain items.

BEFORE BOARD 2, JUNE 28, 1922.

No. 45085.—Protest 937932 of John McLaurin (Los Angeles).

TILOLEUM—LINOLEUM.—Goods invoiced as "tiloleum" were classified as inlaid linoleum at 35 per cent ad valorem under paragraph 276, tariff act of 1913, and are claimed dutiable as plain linoleum at 30 per cent under the same paragraph.

Opinion by WELLER, G. A. It was found that the so-called tiloleum is made by spreading a composition of cork and oil, red in color, on a foundation of jute fabric or burlap, which, when sufficiently dried and hardened, has grooves cut into it with a knife, which are filled in with a gray cement, giving a surface appearance of laid bricks or tiles. On the record and samples it was held dutiable as plain linoleum under paragraph 276, as claimed.

No. 45086.—Protest 943921 of E. Butterworth & Co., Inc. (Boston).

OLD JUTE SACKS—WASTE.—Australian wool sacks ripped up the seams to destroy their further use as bags or pouches classified as manufactures of vegetable fiber under paragraph 284, tariff act of 1913, are claimed dutiable as waste at 10 per cent under paragraph 384.

Opinion by WELLER, G. A. On the authority of United States *v.* Chelsea Bag & Burlap Co. (11 Ct. Cust. Appls. —; T. D. 39079), affirming Abstract 44250, the merchandise in question was held dutiable as waste under paragraph 384.

No. 45087.—Protests 936745, etc., of Pittsburgh Dry Goods Co. (Pittsburgh).

FLAX FABRICS.—The question here is whether certain fabrics are dutiable as manufactures of flax at 35 per cent ad valorem under paragraph 284, tariff act of 1913, as classified, or as plain woven fabrics in chief value of flax at 30 per cent under paragraph 283.

Opinion by WELLER, G. A. The contention of the importer was sustained and the merchandise held dutiable at 30 per cent under paragraph 283.

BEFORE BOARD 3, JUNE 28, 1922.

No. 45088.—Protests 944532, etc., of W. H. Plummer & Co. (Ltd.) et al. (New York).

EMBOSSED EARTHENWARE.—Earthenware classified as decorated at 40 per cent ad valorem under paragraph 79, tariff act of 1913, is claimed dutiable as plain at 35 per cent under the same paragraph.

Opinion by HAY, G. A. On the authority of United States *v.* Todd (11 Ct. Cust. Appls. —; T. D. 38690) white earthenware embossed in the mold was held dutiable at 35 per cent under paragraph 79.

No. 45089.—Protest 943323 of F. P. Dow Co. (Inc.) (Seattle).

TOY LACE FIGURES.—Toy lace figures classified at 60 per cent ad valorem under paragraph 358, tariff act of 1913, are claimed dutiable as toys at 35 per cent under paragraph 342.

Opinion by HAY, G. A. The appraiser reporting that the toy lace figures should have been classified at 35 per cent under paragraph 342 the protest was sustained.

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No. 45090.—Protest 942767 of E. P. Stahel & Co. (New York).

VALIDITY OF REAPPRAISEMENT.—This protest challenges the validity of a certain reappraisement proceeding.

Opinion by HAY, G. A. The issue being the same as that decided in Abstract 45019 the protest was overruled.

No. 45091.—Protest 937753 of Jos. Joseph & Brothers Co. (Cleveland.)

ENTERED VALUE.—It is claimed in this case that the merchandise was erroneously entered at a value in excess of the invoice value.

Opinion by HAY, G. A. Duty having been assessed on the value as entered and appraised the protest was overruled.

No. 45092.—Protest 942927-63128 of International Forwarding Co. (Chicago).

SHORTAGE.—Recovery of duty is sought here on certain beaded bags alleged to have been short and not landed. The merchandise arrived in New York and was entered for immediate transportation to Chicago.

Opinion by ADAMSON, G. A. The collector reports that no exceptions were noted in connection with the cases in question by the lading inspector at New York or the unlading inspector at Chicago, and the importer gave no notice of shortage to the collector. From the evidence it was shown that a shortage occurred somewhere. As to the question whether transportation under bond on a railroad is Government custody, Seeberger *v.* Schweyer (153 U. S. 609) and G. A. 5857 (T. D. 25802) were cited, and it was held that if the robbery occurred on the train the abstracted merchandise is not exempt from duty. No evidence was offered to show the goods were not shipped, although the importer relied upon the circumstance that the packages externally appeared to have been untampered with. The protest was overruled.

No. 45093.—Protest 948543 of Goodman & Levy (New York).

SHORTAGE.—An allowance in duty is claimed here on the ground of shortage.

Opinion by ADAMSON, G. A. The collector stated in forwarding the protest to the board that the discharging inspectors report that one case was not landed, but that the importer did not furnish affidavit of nonimportation. No other evidence was offered. The report of a discharging inspector was held not sufficient to establish a claim of shortage and the protest was overruled on the authority of G. A. 5857 (T. D. 25802), G. A. 3886 (T. D. 18084), and Merwin *v.* Magone (70 Fed. 776).

BEFORE BOARD 3, JUNE 29, 1922.

No. 45094.—Protest 941641 of W. A. Foster & Co. (New York).

GLADIOLUS BULBS—MOTHER-FLOWERING BULBS.—Gladiolus bulbs classified at 50 cents per thousand under paragraph 210, tariff act of 1913, are claimed entitled to free entry under the proviso to that paragraph as mature mother-flowering bulbs imported for propagating purposes.

Opinion by WAITE, G. A. From the evidence it was found that the bulbs in question were imported for propagating purposes, but that they were not mature mother-flowering bulbs. They were therefore held properly assessed under paragraph 210.

No. 45095.—Protests 937163, etc., of L. D. Bloch & Co. et al.

INCENSE AND BURNERS—ENTIRETIES.—The question here is whether decorated earthenware incense burners packed in individual cartons, each with a bundle of incense, were properly classified as entireties at 40 per cent ad valorem under paragraph 79, tariff act of 1913.

Opinion by HAY, G. A. On the authority of Dow *v.* United States (11 Ct. Cust. Appls. —; T. D. 39077) the burners in question were held dutiable und[illegible] 79 and the incense was held separately dutiable at 15 per cent und[illegible]

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No. 45096.—Protest 948002 of Geo. Borgfeldt & Co. (New York).

KEWPIES—DOLLS.—Kewpie dolls classified at 55 per cent ad valorem under paragraph 80, tariff act of 1913, are claimed dutiable as dolls at 35 per cent under paragraph 342.

Opinion by HAY, G. A. The kewpies in question were held dutiable as dolls under paragraph 342. Abstracts 38185 and 39570 followed.

No. 45097.—Protests 948058, etc., of Geo. Borgfeldt & Co. (New York).

EMBOSSED CHINA.—China classified as decorated at 55 per cent ad valorem under paragraph 80, tariff act of 1913, is claimed to be embossed, dutiable as plain at only 50 per cent under the same paragraph.

Opinion by HAY, G. A. White china embossed in the mold was held dutiable at 50 per cent under paragraph 80. United States *v.* Todd (11 Ct. Cust. Appls. —; T. D. 38690) followed.

No. 45098.—Protests 947286, etc., of Park & Tilford (New York).

SHORTAGE.—On the ground that the merchandise did not arrive an allowance in duty is claimed.

Opinion by ADAMSON, G. A. It appears that the regulations have not been complied with. No reason was found to disturb the collector's action and the protests were overruled.

No. 45099.—Protests 937424, etc., of Luyties Bros. et al. (New York).

GAUGE OF LIQUOR.—The claim here is that on certain liquors duty should have been collected under the revenue act of 1918 on the actual quantity withdrawn from warehouse.

Opinion by ADAMSON, G. A. It was held that the liquor should be assessed under the act of 1918 on the actual amount ascertained upon regauge. Bacardi *v.* United States (11 Ct. Cust. Appls. —; T. D. 39078) followed.

No. 45100.—Protest 934228 of Peter McQuade (New York).

WAR TAX ON SPIRITS.—Certain liquors are claimed not dutiable under section 600, revenue act of February 24, 1919, and not subject to any internal-revenue tax whatever.

Opinion by ADAMSON, G. A. On the authority of G. A. 8435 (T. D. 38719), affirmed in Shaw *v.* United States (11 Ct. Cust. Appls. —; T. D. 38990), the protest was overruled.

BEFORE BOARD 1, JUNE 30, 1922.

No. 45101.—Protests 937485, etc., of Chas. H. Brandt (New York).

HORN STRIPS.—Merchandise classified as a manufacture of horn at 20 per cent ad valorem under paragraph 368, tariff act of 1913, is claimed free of duty as horn strips unmanufactured under paragraph 511.

Opinion by MCCLELLAND, G. A. On the authority of United States *v.* Brandt (11 Ct. Cust. Appls. —; T. D. 39082), horn strips cut to length were held free of duty under paragraph 511.

No. 45102.—Protest 945359 of B. Breidbard (New York).

GOOSE FEATHERS.—Goose feathers returned as cleaned and crushed and classified at 40 per cent ad valorem under paragraph 347, tariff act of 1913, are claimed to be crude, dutiable at 20 per cent under the same paragraph.

Opinion by MCCLELLAND, G. A. The feathers in question, not having been subjected to any treatment which would clean them or advance their condition in any manner, were held dutiable at 20 per cent under paragraph 347 as claimed.

No. 45103.—Protest 943309 of A. Rosenthal & Son (New York).

CRUDE GUM.—Merchandise classified at 15 cents per pound under paragraph 36, tariff act of 1913, is claimed entitled to free entry as crude gum under paragraph 477.

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Opinion by McClelland, G. A. Crude caoutchouc gum used in the manufacture of chewing gum was held free of duty under paragraph 477 as claimed. United States *v.* Danker (2 Ct. Cust. Appls. 522; T. D. 32251) noted.

No. 45104.—Protests 942860, etc., of H. & E. & S. Myers (New York).

Stipa Grass.—Stipa grass, classified as colored at 60 per cent ad valorem under paragraph 347, tariff act of 1913, is claimed to be in its natural condition free of duty under paragraph 497.

Opinion by McClelland, G. A. Stipa grass in its natural condition was held entitled to free entry under paragraph 497. United States *v.* Post (3 Ct. Cust. Appls. 260; T. D. 32568) followed.

No. 45105.—Protest 933490 of Andrew Jergens Co. (Cleveland).

Attar of Roses.—Merchandise invoiced as "artificial otto Rose de France," classified as perfumery at 60 per cent ad valorem under paragraph 48, tariff act of 1913, is claimed dutiable at 20 per cent under paragraph 46 as attar of roses.

Opinion by McClelland, G. A. On the amended report of the appraiser that this commodity is not in itself sold as perfumery, but is used in the manufacture of perfumery, the claim for duty at 20 per cent under paragraph 46 was sustained. G. A. 8352 (T. D. 38446), G. A. 5732 (T. D. 25438), and G. A. 5535 (T. D. 24905) noted.

No. 45106.—Protests 942227, etc., of Horwitz & Arbib, protest 935006 of Garo Keshishian & Co., protest 940175 of Scaramelli & Co., and protests 934317, etc., of F. B. Vandegrift & Co. (New York).

Glove Leather.—Unfinished lambskins, classified as glove leather at 10 per cent ad valorem under paragraph 359, tariff act of 1913, are claimed entitled to free entry under paragraph 530.

Opinions by McClelland, G. A. Keshishian *v.* United States (11 Ct. Cust. Appls. —; T. D. 38961) followed holding unfinished lambskins free of duty as leather not specially provided for under paragraph 530.

No. 45107.—Protest 943801 of Giovanni Aquino, Inc. (New York).

Bead Necklaces.—Beads strung on cotton threads and clasps classified as entireties at 50 per cent ad valorem under paragraph 333, tariff act of 1913, are claimed dutiable separately.

Opinion by Sullivan, G. A. The necklaces were found dutiable as beads temporarily strung at 35 per cent under paragraph 333, and the protest was overruled as to the clasps, as no applicable claim was made.

No. 45108.—Protest 943587 of G. Hirsch's Sons (New York).

Beads—Tubes Verre.—Merchandise invoiced as "tubes verre," consisting of glass beads loosely strung, was classified as blown glass articles at 45 per cent ad valorem under paragraph 84, tariff act of 1913, and is claimed dutiable at 35 per cent under paragraph 333, or at 30 per cent under paragraph 95.

Opinion by Sullivan, G. A. The glass beads in question were held dutiable at 35 per cent under paragraph 333.

No. 45109.—Protests 941229, etc., of M. Gugenheim et al. (New York).

Shortage of Beads.—An allowance for a shortage of bead necklaces is claimed here, the appraiser reporting that the shortage was due to robbery.

Opinion by Sullivan, G. A. There being nothing to indicate that the robbery occurred after the merchandise arrived in this country, the protest was sustained on the authority of G. A. 8479 (T. D. 38911), affirmed in United States *v.* Lippmann (11 Ct. Cust. Appls. —; T. D. 39145).

No. 45110.—Protests 939101, 939696, and 941729 of American Bead Co. (New York).

Imitation Precious Stones.—Jewels, cabochons, and similar merchandise classified at 30 and 35 per cent ad valorem under paragraphs 95 and 333, tariff act of

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1913, are claimed dutiable as imitation precious stones for use in the manufacture of jewelry at 20 per cent under paragraph 357.

Opinions by SULLIVAN, G. A. The merchandise being the same as that passed upon in Abstract 44103, it was held dutiable under paragraph 357 as claimed.

No. 45111.—Protests 939078, 940768, etc., of A. J. Bracher et al., protests 940679, etc., of Haber Bros. et al., and protests 938813, etc., of Lakenmacher Co. et al. (New York), protests 935463, etc., of H. Blitzer et al. (New York and Seattle), and protests 938407, etc., of Morimura Bros. (San Francisco, Seattle, and New York).

CHRISTMAS-TREE ORNAMENTS.—Small colored-glass balls or oval articles classified as beaded articles at 50 per cent ad valorem under paragraph 333, tariff act of 1913, are claimed dutiable as blown-glass articles at 45 per cent under paragraph 84.

Opinions by SULLIVAN, G. A. G. A. 8427 (T. D. 38697), affirmed in Woolworth *v.* United States (11 Ct. Cust. Appls. —; T. D. 38985), followed holding similar Christmas-tree ornaments dutiable under paragraph 84.

No. 45112.—Protest 944270 of Ch. Patrikiades Sons (New York).

CAVIAR.

BROWN, General Appraiser: The appraiser in his report states that the merchandise in question is described on the invoice as preserved red caviar and consists of preserved roe of fish put up in hermetically sealed tins. It was returned for duty at 30 per cent ad valorem under the provisions for caviar in paragraph 216, act of 1913. The importer claims that said merchandise is covered by, and is free of duty under, paragraph 478 as eggs of fish.

We feel constrained to hold on this record that the burden of proof has not been sustained by the importer to show that the merchandise is not preserved in the sense of the paragraph under which it was classified or to bring it within the ruling in Moscahlades *v.* United States (6 Ct. Cust. Appls. 399; T. D. 35973).

The protest is therefore overruled. Judgment in favor of the Government will issue accordingly.

No. 45113.—Protest 941723 of Milwaukee Coke & Gas Co. (Milwaukee).

NAPHTHALENE.

BROWN, General Appraiser: The naphthalene the classification of which is here at issue was classified at 2½ cents a pound and 15 per cent ad valorem under sections 500 and 501 of the act of 1916. It is claimed to be free of duty under Group I, section 500 of said act.

After careful consideration of this voluminous record we hold on the weight of the evidence that the merchandise has a solidifying point under 79° C., which fact entitles it to free entry as claimed in the protest.

Judgment for refund of duty will issue accordingly. (See Abstract 44732 of January 27, 1922, passing on protest 940499.)

No. 45114.—Protests 943608, etc., of Wm. B. Leonard et al., and protest 943445 of John Wanamaker (New York).

FLANNELS.—Merchandise classified as wool cloth at 35 per cent ad valorem under paragraph 288, tariff act of 1913, is claimed dutiable as flannels under paragraph 289.

Opinions by BROWN, G. A. Connor *v.* United States (9 Ct. Cust. Appls. 312; T. D. 38241) followed, holding certain flannels dutiable under paragraph 289.

No. 45115.—Protest 946215 of Meadows, Wye & Co., Inc. (New York).

TAPESTRY CLOTH.—Tapestry cloth composed of wool, classified as a pile fabric at 40 per cent ad valorem under paragraph 288, tariff act of 1913, is claimed dutiable at 35 per cent under paragraph 258.

Opinion by BROWN, G. A. The tapestry cloth in question was found not to be a pile fabric and held dutiable at 35 per cent as claimed.

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Opinion by ADAMSON, G. A. Under the facts of this case it was held that section 2921 of the Revised Statutes must control, and the shortage reported by the appraiser must be allowed, although the affidavit may not conform to the regulation or requirement of the collector. The protest was sustained to this extent.

REHEARINGS GRANTED.

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